

CADON
EAB
-H26

Government
Publications

EA-87-02



ENVIRONMENTAL ASSESSMENT BOARD

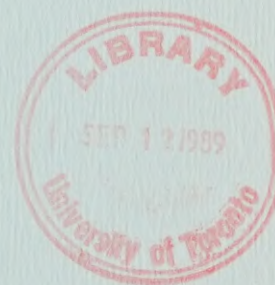
VOLUME: 129

DATE: Tuesday, September 5th, 1989

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

FARR &
ASSOCIATES
REPORTING INC.

(416) 482-3277

2300 Yonge St., Suite 709, Toronto, Canada M4P 1E4

CADON
EAB
-H26

Government
Publications

EA-87-02



ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 129

DATE: Tuesday, September 5th, 1989

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

FARR
ASSOCIATES &
REPORTING INC.

(416) **482-3277**

2300 Yonge St., Suite 709, Toronto, Canada M4P 1E4



Digitized by the Internet Archive
in 2023 with funding from
University of Toronto

<https://archive.org/details/31761116521204>

HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Tuesday, September 5th,
1989, commencing at 1:00 p.m.

VOLUME 129

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	MINISTRY OF NATURAL
MS. C. BLASTORAH)	RESOURCES
MS. K. MURPHY)	
MS. Y. HERSCHER)	
MR. B. CAMPBELL)	MINISTRY OF ENVIRONMENT
MS. J. SEABORN)	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN)	ASSOCIATION and ONTARIO
MS. E. CRONK)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY)	ASSOCIATION
MR. H. TURKSTRA	ENVIRONMENTAL ASSESSMENT
	BOARD
MR. J. WILLIAMS, Q.C.	ONTARIO FEDERATION OF
MR. B.R. ARMSTRONG	ANGLERS & HUNTERS
MR. G.L. FIRMAN	
MR. D. HUNTER	NISHNAWBE-ASKI NATION
	and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. P. SANFORD)	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
MR. D. WOOD)	POWER & PAPER COMPANY
MR. D. MacDONALD	ONTARIO FEDERATION OF
	LABOUR
MR. R. COTTON	BOISE CASCADE OF CANADA
	LTD.
MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES)	ASSOCIATION
MR. R. EDWARDS)	NORTHERN ONTARIO TOURIST
MR. B. McKERCHER)	OUTFITTERS ASSOCIATION

APPEARANCES: (Cont'd)

MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD)	
MR. J.W. ERICKSON, Q.C.)	RED LAKE-EAR FALLS JOINT
MR. B. BABCOCK)	MUNICIPAL COMMITTEE
MR. D. SCOTT)	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS
	OF COMMERCE
MR. J.W. HARBELL)	GREAT LAKES FOREST
MR. S.M. MAKUCH)	
MR. J. EBBS	ONTARIO PROFESSIONAL
	FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM
	ASSOCIATION OF ONTARIO
MR. D. COLBORNE	GRAND COUNCIL TREATY #3
MR. R. REILLY	ONTARIO METIS &
	ABORIGINAL ASSOCIATION
MR. H. GRAHAM	CANADIAN INSTITUTE OF
	FORESTRY (CENTRAL
	ONTARIO SECTION)
MR. G.J. KINLIN	DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC	MINISTRY OF NORTHERN
	DEVELOPMENT & MINES
MR. M. COATES	ONTARIO FORESTRY
	ASSOCIATION
MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON
	WATCHDOG SOCIETY

APPEARANCES: (Cont'd)

MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON
MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION

(iv)

I N D E X O F P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>BRUCE ADAMSON,</u> <u>SERGE TENAGLIA,</u> <u>NEVILLE WARD,</u> <u>GORDON PYZER,</u> <u>DAVID M. HOGG,</u> Resumed	21833
Cross-Examination by Ms. Swenarchuk	21833

(v)

I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
781	Letter addressed to Mr. Don Huff dated June 29, 1987.	21901
782	Undertaking by MNR to Forests for Tomorrow.	21906



September 6, 1989

To List Attached:

RE: Class Environmental Assessment for Timber Management
 on Crown Lands in Ontario - Transcript Volume 89,
 April 11, 1989

Enclosed is page 14984 from the transcript of evidence for Volume 89 of the Class Environmental Assessment Hearings for Timber Management dated April 11, 1989. The court reporting service, Farr & Associates, has provided this page to correct an error/omission. Please insert this page in your copy of the transcript.

Yours very truly,

Tracy Tieman

Tracy Tieman
Project Administrator
Class E.A. for Timber Management
 on Crown Lands in Ontario
34 North Cumberland Street
6th Floor
Thunder Bay, Ontario
P7C 4L4

TLT/jmz

enclosure



1 have been created on the lake, there is a decline of
2 the moose population, a trail has been punched through
3 to access the lake and that there are problems
4 associated with the roads that have been built near Oba
5 Lake.

6 A. I guess two things. I would need to
7 know that there is some written information on this, it
8 would certainly help me in responding to your
9 questions. And the second thing is, I don't know which
10 harvest you are describing.

11 If there is a connotation that it is as a
12 result of the harvest which I described, and I think
13 that it would be valuable at least for myself, if not
14 the Board, to know whether that is what you are
15 suggesting.

16 MR. CLARK: A. Mr. Edwards, I'm sitting
17 here squirming and I have been doing so for about the
18 last hour and I think that is because I was district
19 manager in Wawa and I think -- I find that the line of
20 questioning really unfortunate today because frankly
21 you are talking to the wrong people.

22 If you want to know what is going on
23 in the District, I suggest that the most appropriate
24 people to talk to are the district manager and the unit
25 forester involved. And certainly if you want to know

1 ---Upon commencing at 1:10 p.m.

2 THE CHAIRMAN: Good afternoon. Be
3 seated, please.

4 MS. SWENARCHUK: I believe Mr. Cassidy
5 has a matter to raise with you first.

6 MR. CASSIDY: Thank you. Mr. Chairman, I
7 rise just on a matter of clarification with respect to
8 a portion of the transcript which I've had occasion to
9 review and I seek your clarification of it.

10 I believe I told Mr. Mander earlier that
11 it relates to Volume 117 of the transcript for
12 Wednesday, June 21st, and specifically page 19657 and
13 it relates, Mr. Chairman and Board, to the discussion
14 regarding the swearing of witnesses at the upcoming
15 Dryden satellite hearing, and I have highlighted the
16 portion that I'm interested in and I'll bring it your
17 to attention.

18 You, in response to a submission from Mr.
19 Lindgren, stated that the MNR witnesses might be sworn,
20 but you go on to say, and I am quoting:

21 "What we are saying is, we are not going
22 to necessarily swear in all of the
23 parties who wish to address the Board."

24 That's the sentence in particular that I
25 would like some clarification on this morning -- or

1 this afternoon, if possible.

2 It relates to a concern of our client
3 that, in our view, the witnesses who appear before the
4 Board in Dryden should be sworn, not just the MNR
5 witnesses but any witnesses who appear there. And we
6 are aware, of course, of the Board's Rule 35 which
7 states that witnesses are to be sworn or affirmed when
8 giving evidence before the Board.

9 It is our view that the evidence is more
10 credible if witnesses are sworn to tell the truth and
11 that our rights of cross-examination, which we are
12 permitted under Section 10 of the SPPA would be more
13 useful to us if we had that knowledge that witnesses
14 have been sworn to tell the truth.

15 We are also aware, of course, of the
16 exceptions that the Board may impose in respect of any
17 Board rule pursuant to Section 5 of the Board's Rules
18 and also the provisions in Section 15 of the SPPA.

19 However, it's our submission that the
20 general rule that is applicable in any form of
21 quasi-judicial or judicial proceeding; that is, that
22 witnesses are sworn except in the presence of
23 extraordinary circumstances such as child witnesses,
24 should apply in this circumstance and the clarification
25 we're seeking is if that isn't your intention, if you

1 could enumerate for us the circumstances in which you
2 foresee that witnesses would not be sworn in Dryden.

3 THE CHAIRMAN: Very well. It is the
4 Board's intention to swear the witnesses being called
5 on behalf of the Ministry. They are sworn in these
6 proceedings here, they should be treated no
7 differently, in the Board's view, at some of these
8 satellite hearings.

9 With respect to the general public,
10 though, the Board is sometimes reluctant to force the
11 public to be sworn in circumstances where the Board
12 feels that this, in fact, may intimidate them from
13 giving evidence. And this is applicable, Mr. Cassidy,
14 essentially to the public sessions, to the sessions
15 where the general lay public attend, usually not
16 represented by counsel, usually attend for the purposes
17 of one of the daytime or evening sessions and are not
18 following the proceedings on an ongoing basis.

19 In those circumstances we have found
20 occasionally that the public views the formality of a
21 proceeding where every witness giving evidence of any
22 kind to the Board somewhat intimidating and we have
23 sought, in several hearings that I have presided over
24 and other members of the Board, to alleviate that
25 situation in not swearing those witnesses unless, for

1 some particular reason, the witness may wish to be
2 sworn and give it under oath.

3 We don't feel particularly that that
4 inhibits the quality of the evidence in any way. As
5 you are aware, under the Statutory Powers Procedure Act
6 the weight given to the evidence by the Board is solely
7 within the discretion of the Board and the fact that a
8 witness is not sworn, particularly a member of the
9 unrepresented - by that I mean unrepresented by
10 counsel - public, the Board can take into account the
11 manner in which they are giving their evidence and make
12 some determination on its own as to the credibility of
13 that evidence. We don't feel particularly that because
14 the evidence is not given under oath, in those
15 circumstances, it necessarily is less credible than
16 evidence given under oath.

17 MR. CASSIDY: Is it your intention, sir,
18 to make that determination as to require the oath or
19 not require the oath or affirmation on a
20 witness-by-witness or case-by-case determination?

21 THE CHAIRMAN: Well, we may end up making
22 some kind of statement at the outset of those
23 particular proceedings relative to the swearing of
24 witnesses in that category.

25 MR. CASSIDY: And my final question

1 before I retire to consider the implications of what
2 you've said, Mr. Chairman, is: It is my client's
3 understanding that the right to cross-examine that is
4 contained in Section 10 of the SPPA would be preserved
5 with respect to any party appearing before the Board--

6 THE CHAIRMAN: Yes, yes.

7 MR. CASSIDY: --whether or not they are
8 sworn. The matter of regulating the nature of that
9 cross-examination, of course, would be left within the
10 Board's purview.

11 THE CHAIRMAN: That is correct.

12 Certainly counsel for any of the parties will not be
13 precluded from cross-examining any witness giving
14 evidence to this Board, but counsel must bear in mind
15 that the Board will be very vigilant as to the
16 treatment accorded to a lay unrepresented witness.

17 MR. CASSIDY: Certainly.

18 THE CHAIRMAN: By that we mean, we are
19 not looking for the type of cross-examination that, to
20 use the vernacular, goes for the jugular because that
21 doesn't serve any purpose other than, in our view, to
22 intimidate the public from coming forth in a proceeding
23 such as this.

24 MR. CASSIDY: Thank you very much, Mr.
25 Chairman. I appreciate your clarification and I will

1 retire to consider its implications now.

2 Thank you.

3 THE CHAIRMAN: All right. Mr. Freidin?

4 MR. FREIDIN: In relation to that
5 particular subject matter, is it the Board's practice
6 when witnesses do appear -- lay witnesses do appear
7 that you ask them specifically if they would like to be
8 sworn so as to give them the option as each of them
9 appear?

10 THE CHAIRMAN: Well, as I say, we may
11 have a general statement made at the beginning or the
12 outset of the proceedings and then perhaps ask the
13 witnesses as they come forward if they wish to be
14 sworn. If they wish to be sworn, there is certainly no
15 hesitation on the part of the Board to do so.

16 MR. FREIDIN: Right. I would make -- I
17 only rise to make the comment because I have the same
18 concern as Mr. Cassidy and if in fact it's the Board's
19 intention to not require it, I think it would be a
20 useful middle ground to ask each witness as they appear
21 whether they would like to be sworn. So I make that
22 suggestion.

23 THE CHAIRMAN: All right. But I would
24 caution counsel against making too much of the whole
25 business of the swearing of witnesses in that category

1 because it has been the Board's experience over the
2 years that the evidence that comes forward from
3 unrepresented lay witnesses is every bit of the same
4 quality as the evidence coming forth from witnesses who
5 are sworn.

6 We think it is a more important aspect of
7 the proceedings to ensure that witnesses in that
8 category can testify freely before the Board and in no
9 way feel intimidated, and we seek to keep the
10 informality of that type of session preserved to the
11 extent that we can. Different rules in the Board's
12 view apply to those parties represented by counsel and
13 to those unrepresented parties who appear before the
14 Board in an ongoing basis in connection with a
15 particular proceeding.

16 Any further questions with regards to
17 that?

18 (no response)

19 MR. CASSIDY: Mr. Chairman, as I
20 indicated I would like to consider your clarification
21 further. I may have something further to say on that,
22 but it would be at a later date.

23 THE CHAIRMAN: Very well. I might just
24 add, Mr. Cassidy, that it has not been a problem in
25 past proceedings where the witnesses have, in that

1 category, testified without having been sworn first.
2 If you can come up with some cogent reason why it is
3 absolutely necessary, we will be pleased to hear from
4 you.

5 MR. CASSIDY: Thank you, sir.

6 THE CHAIRMAN: Thank you.

7 Ms. Swenarchuk?

8 MS. SWENARCHUK: Good afternoon.

9

10 BRUCE ADAMSON,
11 SERGE TENAGLIA,
12 NEVILLE WARD,
GORDON PYZER,
DAVID M. HOGG, Resumed

13 CROSS-EXAMINATION BY MS. SWENARCHUK:

14 Q. I think the first question is for
15 you, Mr. Tenaglia. Does the Ministry have a policy of
16 keeping any Crown lands roadless or is every area
17 potentially open to road construction?

18 MR. TENAGLIA: A. The District Land Use
19 Guidelines would certainly identify areas that are
20 going to be roadless or that have been designated that
21 where there may be restrictions on where roads may go
22 or may not go. I'm not aware of a particular policy
23 per se that identifies certain areas as specific as you
24 say that will not have any roads.

25 Q. Can you give me some examples of land

1 use guidelines that include such limitations?

2 A. I believe one of the examples that I
3 used in my evidence package was caribou area, zone 10
4 of Nipigon District Land Use Guidelines. It didn't
5 really indicate that the area would not be roadless, it
6 indicated that primary use was indeed commercial
7 tourism and that logging and timber management is a
8 secondary use.

9 Q. Well, first of all, with respect to
10 the Nipigon District Land Use Guidelines, are you aware
11 that there is a proposed amendment with respect to zone
12 10 to remove the 120-metre no cut reserves on
13 designated canoe routes in the Caribou Lake zone?

14 A. Yes, I am and that's just what it is,
15 it's a proposal that has gone forward to the public and
16 it may or may not be implemented. It's subject to
17 public review and public comment.

18 Q. And the purpose of that proposal is
19 stated as:

20 "To actively manage these areas using
21 approved guidelines."

22 A. Correctly, yes.

23 Q. So -- and you will agree with me;
24 will you not, that there is nothing in that Nipigon
25 land use guideline as reproduced in your volume of

1 witness statement that precludes roads in any of these
2 areas?

3 A. No, it doesn't preclude roads.

4 Q. And it doesn't suggest that roads
5 should not be built either?

6 A. It suggests that roads will certainly
7 be managed in such a fashion so as to protect -- better
8 protect or better recognize the commercial tourism
9 which is the primary use in that area.

10 Q. Okay. So to go back to my question
11 then, I take it you will agree that there isn't a
12 policy within the Ministry designed to protect certain
13 size areas of land from the building of roads?

14 A. Again, I'm not aware of a policy per
15 se that does that.

16 Q. Okay.

17 A. I don't know if any other panel
18 member could speak to that, though.

19 Q. Anyone else aware of such policy?
20 Mr. Pyzer, you might be aware if there were one.

21 MR. PYZER: A. No, I would say the very
22 same. There are areas that were looked at as nature
23 reserves during the parks planning exercise.

24 When you say is there a policy or areas,
25 certainly there are areas at that size, and I'm

1 thinking of several thousand hectares, that we wouldn't
2 build a road in.

3 Q. And what sort of areas are those?

4 A. Again, you would have to look and see
5 what the particular purpose was, if it was for a
6 protection purpose. The Aulneau Peninsula, the entire
7 Aulneau Peninsula, forestry is a secondary use and the
8 primary use of the Aulneau Peninsula is wildlife
9 management and certainly roads are -- the potential
10 exists that roads would not be permitted on the
11 Aulneau.

12 Q. But there is no stated -- with
13 respect to the Aulneau, for example, there is no
14 document or no policy within the Ministry now which
15 says that that peninsula will be protected from road
16 construction?

17 A. We are doing a management plan for it
18 right now and that may be one of the directions that
19 come out of the management plan.

20 Q. Well, is that a proposal in the
21 management plan at this point?

22 A. No, it's being prepared right now.

23 Q. And when will that be completed?

24 A. It's a multi-interest group steering
25 committee, a public steering committee. I believe that

1 exercise has a timetable of another year to go before
2 the final plan comes out, but that plan will give the
3 direction to timber management. And, again, if the
4 decision is no roads, then I suppose that option exists
5 and that would be a direction.

6 Q. First of all, I would like your
7 undertaking that we will be provided with that when
8 it's completed?

9 A. A copy of the Aulneau wildlife
10 management plan?

11 Q. Right.

12 A. No problem at all.

13 Q. All right. Now, we've talked about
14 two areas, Nipigon and Aulneau where there is a
15 possibility of no road construction, but no clear
16 statement anywhere that either one of these areas is
17 going to be protected from road construction.

18 Can anyone on the panel list any other
19 areas for me?

20 A. Again, the only point I would want to
21 emphasize is that you have to look at the objective of
22 the zone and the objective or the land use intent.

23 Every zone where we have done a District
24 Land Use Guideline, which is basically every district
25 in the province, has an intent and you have to look at

1 what that intent is to --

2 Q. Mr. Pyzer, I want to be really simple
3 and as brief as possible. In my reading of various
4 District Land Use Guidelines I don't recall ever seeing
5 a prescription that said: In this particular area no
6 roads will be constructed, outside of perhaps
7 wilderness parks.

8 A. Yes, I was going to say most all of
9 the parks in that category would certainly have that.

10 Q. But outside of those parks, would you
11 agree with me there is no specific prescription in
12 District Land Use Guidelines precluding road
13 construction in any particular areas?

14 A. No, it would be left to the next
15 level of planning which is the resource management plan
16 that's with prescription.

17 Q. All right. Let's go to that then.

18 A. Okay.

19 Q. At the resource management plan level
20 then are any of you aware of areas in the province
21 outside of wilderness parks where the stated objective
22 is no roads will be constructed in this particular
23 area?

24 A. Again --

25 Q. I want to be very clear--

1 A. Sure.

2 Q. --that that is an objective in the
3 plan as opposed to a mere possibility which may be
4 there because the area is being managed for tourism
5 because we all know roads can go into those areas. So
6 I'm looking for a clear stated objective that on a
7 given part of land no roads will be constructed.

8 A. See, I am trying to be helpful here.
9 We don't come at it in terms of our resource management
10 planning doing -- with the road being the objective; we
11 would come at it from either the wildlife management
12 plan being the objective or the tourism strategy being
13 the objective or the timber management plan, and it
14 would flow from the objective of doing that resource
15 management plan what the prescription is relative to
16 roads.

17 So if your question is: Do we do road
18 planning, the answer really is no, we do those other
19 resource management plans which give direction to where
20 roads may or may not go.

21 Q. However it's done, Mr. Pyzer, I put
22 it to you--

23 A. We have areas --

24 Q. --it is my understanding that outside
25 of wilderness areas -- wilderness park areas, there

1 isn't any part of this province which is clearly
2 protected from road construction. We're talking about
3 the area of the undertaking.

4 A. Again, I'd have to know the area
5 because there are large portions of our districts --
6 our district in terms of protecting areas where roads
7 are not permitted, and that's a decision that we've
8 made in some management plan; it could be timber
9 management.

10 Now, the areas are probably not -- in
11 terms of a District Land Use Guideline zone area, it
12 could be several hundred acres or several thousand
13 acres, but areas where we've said that for whatever
14 reason in that management plan we're not going to be
15 building a road right now at least.

16 Q. Right now?

17 A. That's correct. But there isn't a
18 policy that says, you know, forever and a day a road in
19 this part of this district will not have -- or we won't
20 build a road.

21 Q. Right.

22 MR. WARD: A. Ms. Swenarchuk, I don't
23 know whether this will help you or not, but I've got
24 the Kenora District Fisheries Management Plan and one
25 of the strategies in the plan is to route new roads

1 away from small, hence easily exploited, walleye lakes
2 to keep the fishing pressure low.

3 Is that the kind of direction you're
4 looking in terms of a resource management plan in terms
5 of where roads can and cannot go?

6 Q. Well, what is your assessment of
7 that, Mr. Ward, then that there will...

8 A. Within a certain distance of some of
9 these smaller easily exploited walleye lakes that we
10 would keep roads away from them, and that's outlined in
11 the fish management plan.

12 Q. Okay. That's another possibility.

13 A. And we'd use the timber management
14 planning process to implement that.

15 Q. And there's nothing though - correct
16 me if I'm wrong - in that plan which would indicate
17 that you're attempting to preserve areas of any
18 particular size; is that right?

19 A. You mean a certain type of area
20 that's -- there would be no -- no, there isn't anything
21 specific.

22 Q. Okay.

23 MR. TENAGLIA: A. In Wawa District we
24 have a number of plans that have been approved in
25 certain -- in another draft plan for the Wawa Crown

1 Unit, but the one timber management plan that has been
2 approved, the Magpie Forest TMP, we have restrictions
3 on primary roads, secondary roads and tertiary roads in
4 terms of where they can be built around certain outpost
5 camp and main base lodge lakes. We have identified
6 zones where any one of those types of roads cannot be
7 built.

8 Q. Thank you.

9 MS. SWENARCHUK: Can we have a copy of
10 that, Ms. Blastorah?

11 MS. BLASTORAH: I'm sorry, a copy of
12 what?

13 MS. SWENARCHUK: Of the management plan
14 prescriptions that he has just referred to?

15 MS. BLASTORAH: I don't have any problem
16 with that, Mr. Chairman. I'm not sure how quickly we
17 can get it here. I did have one question with regard
18 to the last undertaking--

19 MS. SWENARCHUK: It needn't be quick.

20 MS. BLASTORAH: Okay. --for the wildlife
21 management plan for the Aulneau Peninsula. I was just
22 wondering, is it the entire plan that Ms. Swenarchuk
23 is interested in or just the provisions relating to
24 roads or exclusion of roads?

25 MS. SWENARCHUK: Exactly, the latter.

1 MS. BLASTORAH: The latter. Okay, thank
2 you.

3 MS. SWENARCHUK: Q. All right. Mr.
4 Tenaglia, then, moving on to the next question. You
5 said at page 70 of the witness statement -- I can just
6 read it, it's only one sentence. It's the last
7 sentence of the first paragraph with regard to primary
8 roads that:

9 "They are essentially permanent roads
10 regularly maintained with an expected
11 life in excess of 15 years."

12 MR. TENAGLIA: A. Correct.

13 Q. Now, are they -- which is it, are
14 they about -- do they last about 15 years or are they
15 actually permanent roads?

16 A. Again, some -- that's a definition
17 that's identified in Document 4. Some of them may very
18 well be permanent roads and some may only last 15, 20
19 years. The use management strategy for those roads
20 would certainly identify the life of those roads.

21 Q. Now, you have described in those
22 pages before and after primary, secondary and tertiary
23 roads. Does the Ministry know what percentage of the
24 land of the area of the undertaking is covered by
25 roads?

1 A. In terms of numbers of roads?

2 Q. No, percentage of land area covered
3 by road construction, or would you have it for any
4 district or any region?

5 A. No, I don't have that kind of
6 information and I don't know that it would be
7 available.

8 Q. I'm assuming it's not available. Is
9 that correct, Mr. Adamson, would you know that?

10 MR. ADAMSON: A. I'm not aware of any
11 studies that would give accurate information. I've
12 heard figures mentioned of 5 per cent, but I don't know
13 where the numbers came from.

14 Q. And you don't personally know
15 whether -- what percentage of land has been given over
16 to road construction?

17 A. No, I don't know.

18 MR. TENAGLIA: A. Usually in a timber
19 management plan when we identify -- when we do the
20 calculations for the depletion we have to identify a
21 factor for road -- for area land base that is depleted
22 to roads, and Mr. Adamson is correct, it usually varies
23 from somewhere between 4 and 5 per cent. But that
24 certainly is no indication of the amount of road area
25 in the area of the undertaking.

1 Q. Do you have statistics on the
2 percentage of roads that are abandoned?

3 A. I don't believe that information is
4 available. No, I -- or collected.

5 Q. Okay. Would you turn to Exhibit 688,
6 Mr. Tenaglia, which were the interrogatories filed by
7 the Ministry, 688, and turn to the second page which
8 was Interrogatory No. 2 from the Ministry of the
9 Environment -- excuse me, page 3, MOE No. 3.

10 THE CHAIRMAN: We don't have that
11 document. Are we supposed to have that?

12 MS. SWENARCHUK: It was on my list.

13 MS. BLASTORAH: It may have been on the
14 list out here, I'm not sure it was on the list we got.

15 MS. SWENARCHUK: 688.

16 MS. BLASTORAH: We just got two
17 interrogatory numbers. 688 was not on our list, just
18 MOE Interrogatory No. 9.

19 THE CHAIRMAN: Well, in any event, we
20 don't have it.

21 MS. SWENARCHUK: Okay. Well, I think we
22 can do it without then, Mr. Chairman.

23 Q. It refers to page 43 of your witness
24 statement, Mr. Tenaglia, and paragraph 46 in this
25 statement:

1 "Regular inspection of all abandoned
2 roads will assist in identifying areas
3 that will require treatment."

4 Now, I notice that it's future tense.

5 MR. TUER: (handed)

6 THE CHAIRMAN: Thank you.

7 MS. SWENARCHUK: Q. "Regular inspection
8 of abandoned roads will assist..."

9 THE CHAIRMAN: Sorry, what question are
10 we on, Ms. Swenarchuk?

11 MS. SWENARCHUK: It's page 3 of that
12 document, MOE Question No. 3.

13 THE CHAIRMAN: Thank you.

14 MS. SWENARCHUK: Referring back to page
15 43 of the witness statement, paragraph 46.

16 Q. So you're talking about the future in
17 which regular inspections of all abandoned roads will
18 occur.

19 Now, the Environmental Guidelines for
20 Access Roads and Water Crossings are being implemented
21 now I assume, is that correct, starting in April or, as
22 Mr. Adamson said, May of this year; is that right?

23 MS. TENAGLIA: A. That's correct.

24 Q. So is there now a program of
25 identification of abandoned roads?

1 A. If I might just refer the question to
2 Mr. Ward. That was from page 43, paragraph 46?

3 Q. Right.

4 MR. WARD: A. Your question, Ms.
5 Swenarchuk, was whether there is a...?

6 Q. Whether there is now, as a
7 consequence of the new guidelines, a program of
8 identification of abandoned roads?

9 A. I believe the guidelines state that
10 abandoned roads will be surveyed once every three years
11 and that's part of the program. I think in terms of
12 the compliance monitoring panel, in Panel 16 we'll get
13 into the forms and the methodology of doing that
14 survey.

15 Q. Well, to your knowledge has that
16 program been put into effect now?

17 A. No.

18 Q. And when should we expect that it
19 will be in effect?

20 A. Well, I'm not sure. To my knowledge
21 I don't know whether it's in effect now, but I would
22 expect that it should be in effect, you know,
23 henceforth, right now I assume.

24 MR. TENAGLIA: A. Wawa District has
25 certainly moved to implementing a program of inspecting

1 abandoned roads through an integrated monitoring
2 program where all the staff make note of any problem
3 areas on abandoned roads and through an annual
4 program -- through an annual documentation program will
5 be able to determine what roads were indeed inspected,
6 what roads remain to be inspected and over the
7 three-year period all abandoned roads will in fact be
8 inspected. So we have started in Wawa District through
9 a monitoring program.

10 Q. And are you aware of whether that's
11 been commenced in any other districts?

12 A. No, I'm not aware.

13 MR. ADAMSON: A. Perhaps I could add
14 something here. Whether or not a road is abandoned and
15 the manner in which it's abandoned will be covered in
16 the use management stratgey.

17 So with that respect, the processes are
18 just now being put into the plans that this road is
19 going to be abandoned and when it's abandoned these are
20 the steps that should be followed.

21 Q. Roads have been abandoned up it now;
22 haven't they?

23 A. Certainly they have. And with
24 respect to inspections, abandoned means that the
25 maintenance has stopped, as we went through in our

1 direct evidence. We keep an eye on those roads, we
2 have in the past, and this document sort of formalizes
3 that to make sure that it's on a regular cycle.

4 And the response given in this
5 interrogatory from MOE, No. 3, is it cites an example
6 in the Nipigon District where inspections showed up
7 problems with water crossings and actions were taken to
8 correct the deficiencies, and those were on abandoned
9 roads.

10 Q. I understand from the evidence and
11 from the interrogatories and I think from the written
12 statement that the Ministry keeps no statistics on
13 tertiary roads and presumably doesn't even know where
14 all the tertiary roads are. Is that not correct, Mr.
15 Tenaglia?

16 MR. TENAGLIA: A. We don't keep in terms
17 of a record of the amount of roads, that's correct, we
18 don't know where they are.

19 Q. All right.

20 A. Or the distance. They're not
21 routinely mapped on cut-over maps.

22 Q. So presumably you don't regularly
23 inspect them if you don't know where they are; is that
24 not correct?

25 A. We don't -- for primary and secondary

1 roads that have been abandoned we certainly would
2 inspect those. Tertiary roads, again as I indicated in
3 my evidence, they're very short term and it's not
4 anticipated that there is a significant environmental
5 impact associated with those roads.

6 Q. Well, we will come back to that
7 issue, but I just want to be clear, first of all. I
8 take it then the Ministry does not inspect tertiary
9 roads either while they are in use or after they are
10 abandoned; is that correct?

11 A. Certainly the water crossings we
12 certainly do.

13 Q. Okay.

14 A. All proposed water crossings, whether
15 they are primary, secondary or tertiary, the proposed
16 water crossing would be reviewed by Ministry staff.

17 Q. And how long has that been going on?

18 A. That is part of the program that --
19 that is part -- again, part of the process that we have
20 identified through the -- through Mr. Adamson's
21 Environmental Guidelines for Access Roads and Water
22 Crossings.

23 Q. Okay. So that is a new program?

24 A. Yes, it is.

25 Q. All right. And up to now, in the

1 past am I correct that the Ministry has not been
2 inspecting tertiary roads?

3 A. Water crossings, yes.

4 Q. Okay. Water crossings you have
5 inspected or you have not?

6 A. We have reviewed all water crossings.

7 Q. All right.

8 A. That has been a practice within the
9 Ministry for some time.

10 Q. Okay. And with respect to the other
11 issues having to do with road construction, impacts on
12 tertiary roads, the Ministry does not inspect; is that
13 correct?

14 A. In areas of normal operations, no, we
15 would not. We certainly would monitor -- we certainly
16 would monitor where the tertiary roads are going, how
17 they are constructed in areas of concern -- if there is
18 any conditions on tertiary roads in areas of concern.

19 Q. And that would date to whenever your
20 area started to implement the new timber management
21 planning practice; is that right?

22 A. That's correct.

23 Q. Now, if we could go to Exhibit 688
24 again - and I apologize for the oversight of leaving
25 this off the list - this is the interrogatories again.

1 It's page 15 of that document and it's Ministry of
2 Environment Question No. 25. I'll just give you a
3 moment to read that, if you like, Mr. Tenaglia.

4 A. Yes.

5 Q. So my reading of that is that the
6 staff look at water crossings in the course of their
7 duties and report to the appropriate road authority any
8 problems seen, the authority being the party
9 responsible for road maintenance which could be the
10 Ministry or a company, and that party may take
11 corrective action based on such factors as
12 environmental effects, traffic disruptions, costs,
13 avoiding higher costs later, if a washout occurs.

14 So it appears to me from that response
15 that corrective action is not mandatory but appears to
16 be largely a question of money and convenience; is that
17 not correct, if traffic disruptions and costs are part
18 of the problem -- part of the decision as to whether
19 corrective action is going to be taken?

20 A. I think Mr. Adamson would speak to
21 this one here.

22 MR. ADAMSON: A. Certainly the
23 availability of funds is one of the factors that
24 influence whether action is taken or not.

25 Q. And traffic disruptions?

1 A. Yes, the potential impact of
2 disruption on traffic and the environmental
3 consequences of whatever the problem is.

4 Q. So we have a series of inspections
5 but we shouldn't assume that following an inspection,
6 if a problem is identified, that there will necessarily
7 be corrective action?

8 A. That's a true statement. It depends
9 on having the resources to do something.

10 Q. Who determines whether the corrective
11 action is required, the Ministry or the company
12 responsible?

13 A. In the case of a road maintained by
14 the company, the company would be responsible; in the
15 case of MNR maintained roads or abandoned roads, it
16 would be the Ministry.

17 MR. PYZER: A. Just to clarify that, I
18 wouldn't quite agree with that. If a company had a
19 road that was potentially creating environmental
20 consequences, I can tell you in Kenora District we
21 wouldn't turn a blind eye to that. If the problem was
22 severe enough, it would become a joint decision and, if
23 need be, we would in fact force that change to be made.

24 Q. With what authority would you force
25 the change?

1 A. With -- depending on what the -- if
2 it was a fisheries impact, we potentially could lay a
3 charge under the Fisheries Act.

4 Q. I want to come back to a point that
5 you made later in your testimony, Mr. Adamson, and that
6 was - and it's very sensible - it says, build it right
7 the first time so you avoid repair costs later if it
8 breaks down, something to that effect.

9 A. Yes.

10 Q. But isn't it true that a company
11 always should anticipate extra costs if they are
12 required to repair a problem that develops later?

13 In other words, if your program of
14 inspections isn't really mandatory, if, as this answer
15 indicates, you can identify a problem but the company
16 will not necessarily be required to clean it up, then
17 your other point is not valid, companies may save costs
18 by building poorly because they may not be forced to
19 repair any later damage.

20 MR. ADAMSON: A. I think the measures
21 are in place now to ensure that the new crossings that
22 are put in are much better than the ones that have been
23 put in in the past, and that is the way we like to look
24 at it.

25 We hope and we fully expect by doing a

1 better job initially we are going to avoid some of the
2 types of problems we have experienced on old roads now.
3 I don't know if that answers your question, but...

4 Q. Well, let's look at it this way.

5 A. The company doesn't really have a
6 choice of whether to do it right or wrong now. The
7 sizes are reviewed, the lengths are viewed, the
8 culverts, the standards that have to be met and really
9 they have to do a good job.

10 Q. That is your view of how the new
11 guidelines will work?

12 A. Yes.

13 THE CHAIRMAN: Mr. Adamson, and perhaps
14 Mr. Pyzer, if the Ministry is ultimately responsible
15 for the Crown land through the planning process; that
16 is, even if the plan is developed by a company
17 ultimately the approval of that plan is up to the
18 Ministry through I assume the district manager and
19 above if there is questions about elements of the plan.

20 If that is the case, how can the Ministry
21 take a position that if they find something to be
22 environmentally improper as a result of a road that was
23 constructed by a company and for which the company is
24 supposedly responsible; that is, the authority -- the
25 road authority as defined in this interrogatory, how

1 can the Ministry take the position that if they
2 determine there is a problem that the company is either
3 not responsible and cannot be forced to fix it or,
4 alternatively, that the Ministry will not take over the
5 responsibility and fix it?

6 I have a little difficulty in
7 understanding why it should be left to the discretion
8 of the company as to whether adequate resources are
9 available if in fact you have determined there is an
10 environmental problem?

11 MR. PYZER: I would agree a hundred per
12 cent. I find that the very same as you do, and if
13 there was a road that went across and was causing a
14 problem our first avenue would be to sit down with the
15 company and sort out who it is that is going to do it
16 and where the resources are going to come from, and if
17 it's something that needs to be fixed it would be fixed
18 and I say that regardless of who would pay for it.

19 THE CHAIRMAN: I mean it's either a
20 problem or it isn't a problem.

21 MR. PYZER: That's right. Exactly.

22 THE CHAIRMAN: And if it's a minor
23 problem that could be fixed the following year or the
24 year after, so be it, maybe you would wait until
25 adequate resources became available, but if it is a

1 problem it would seem to me that because the company
2 could come back and say: Well, it just isn't in our
3 budget for this year and we don't intend to fix it this
4 year, I would find it hard to believe that the Ministry
5 should not have the power available to say: You are
6 going to fix it or, in special circumstances, we will
7 fix it on your behalf and maybe charge you later on or
8 whatever.

9 MR. PYZER: Yes. In fact --

10 MS. SWENARCHUK: Q. Have you ever done
11 that, Mr. Pyzer?

12 MR. PYZER: A. Yes, absolutely. I was
13 just going to say, in fact I believe it was the front
14 cover of Mr. Ward's -- of the cover slide that he used
15 at his presentation happened to be from Kenora District
16 and that was Boise Cascade and I know it cost them
17 upwards of \$300,000 to go back in and fix that and to
18 not do it, or whatever the reason was, was certainly
19 not acceptable.

20 We met with their engineers the minute
21 that road started to fail and we reviewed those
22 crossings, in fact Mr. Adamson was involved as well,
23 and to do anything but that was not acceptable, and it
24 didn't even become a question of who had the money, it
25 was their road, it had failed and we wanted it

1 corrected.

2 And I guess our hesitancy is that
3 there -- I don't know, that these hearings tend to make
4 you say there is always an exception out there and we
5 can't give you an absolute yes or no. But in all
6 honesty I have never ever encountered that situation
7 where we said: Well, there are not dollars so we are
8 not going to do something about it. But I guess that
9 potential does exist.

10 THE CHAIRMAN: I guess the follow-up
11 question is: Do you have the authority to force a
12 company to make good on some environmental impacts that
13 you deem to be serious enough to require remedial
14 action?

15 MR. PYZER: I believe we do. If you were
16 to ask me the appropriate sections I guess, you know,
17 we would start quoting things like the Fisheries Act or
18 whatever, but I believe it --

19 MS. SWENARCHUK: Q. Well, Mr. Pyzer, the
20 Fisheries Act surely gives you no authority to order
21 remedial action on a road, it gives you the authority
22 to lay charges with respect to damage to a fishery but
23 that is not going to clean up the road.

24 MR. PYZER: A. Mr. Ward I think is...

25 MR. ADAMSON: A. I believe the Lakes and

1 Rivers Improvement Act may be able to be used to take
2 corrective action. It contains provision for
3 Minister's orders and if they are not followed the
4 Ministry can come in and do something.

5 Q. In your experience, have you ever
6 been involved in such an action?

7 A. We have been involved in Minister's
8 orders and when they came about the company took
9 action. It wasn't to do with a water crossing, it was
10 to do with a dam.

11 Q. I see. You have one example of that
12 in your experience; is that right?

13 A. Yes.

14 Q. And it has to do with a dam rather
15 than water crossing or other facets of road
16 construction?

17 A. Well, we were speculating as to what
18 types of legislation could be used if it was necessary
19 and I speculate that that is one that could be used if
20 it were necessary.

21 I should clarify for the Chairman my
22 comments regarding availability of resources referred
23 to abandoned roads. I thought the context was
24 inspection of water crossings on abandoned roads, what
25 actions would be taken by the Ministry to correct them.

1 Certainly if there are problems with
2 water crossings, as Mr. Pyzer mentioned, and the forest
3 industry were maintaining the road, were responsible
4 for the road, they would have to fix it and this
5 happens frequently.

6 THE CHAIRMAN: Well, when you say have
7 to, I guess that is the area that we are interested in.
8 Apart from you saying we would like you to fix it, if a
9 company for whatever reasons refuses to fix it or
10 doesn't fix it within a time frame that the Ministry
11 deems acceptable, what is your recourse?

12 MR. TENAGLIA: There are provisions in
13 the amended Public Lands Act to order a company to
14 clean up a site or to have the Ministry clean the site
15 up and get reimbursement from the company. There is
16 authority under the amended Public Lands Act for stop
17 work orders as well as ceasing operations immediately
18 if there is a potential or if there is an impact.

19 THE CHAIRMAN: And this would cover the
20 road situation?

21 MR. TENAGLIA: Yes, certainly.

22 THE CHAIRMAN: Thank you.

23 MS. SWENARCHUK: Q. Mr. Tenaglia, in
24 your direct testimony - and this is at pages 19758 and
25 9 and following, page 60 - you were talking about

1 tertiary roads.

2 MR. TENAGLIA: A. May I have the page
3 number again?

4 Q. 19756 to 8?

5 A. Yes, I have that.

6 MR. FREIDIN: What is the volume, Ms.
7 Swenarchuk?

8 MS. SWENARCHUK: It's Volume 118.

9 Q. And then at page 59, Mr. Tenaglia,
10 you said that it's -- with respect to tertiary roads:
11 "It's up to the foreman and equipment
12 operator to decide how best to deal with
13 the specific weather and terrain
14 conditions in selecting a specific
15 location for tertiary roads."

16 So that is a fairly significant power
17 that the foreman and equipment operator have?

18 A. Again, that's in an area of normal
19 operations.

20 Q. Right.

21 A. In an area of concern there are
22 certain -- there may be certain conditions identified
23 as to where and how that road can be built.

24 Q. Right. There may be. I take it then
25 outside of areas of concern the Ministry does not

1 create any prescriptions with regard to where tertiary
2 roads are built?

3 A. Not unless there is a perceived
4 concern.

5 Q. Give me an example.

6 A. And if that's the case, then that
7 area would probably be an area of concern.

8 Q. So, for example, in areas of terrain
9 that have been described in this hearing at various
10 times as fragile or sensitive sites, shallow soil,
11 bedrock areas with respect to tertiary roads - and even
12 primary and secondary roads - is it correct that the
13 Ministry, if the area has not been described as an area
14 of concern, does not prescribe where the road should be
15 located?

16 A. If it's -- yes, if it's not described
17 as an area of concern, then there probably would be no
18 restrictions on where that tertiary road can be
19 located.

20 Q. And with respect to areas of concern,
21 is it not correct that not all areas of concern will
22 include any prescriptions with regard to tertiary road
23 building?

24 A. That's quite possible. In some areas
25 of concern tertiary roads may not be a particular

1 concern.

2 Regardless of -- I guess regardless of
3 the areas of concern specific to water crossings. I
4 think Mr. Adamson indicated that the new guidelines do
5 apply to all water crossings, again primary, secondary
6 or tertiary roads. So those guidelines would be
7 applied to all water crossings.

8 Q. With respect to the rest of the road
9 outside of an area of concern, presuming -- the
10 presumption of the Ministry is that all environmental
11 concerns can be covered by the application of these
12 guidelines; is that correct?

13 A. Yes. Those guidelines would apply to
14 all roads.

15 Q. Now again, Mr. Tenaglia, with regard
16 to tertiary roads, they can cross water; can they not?

17 A. In what sense?

18 Q. They can be built across water,
19 tertiary roads?

20 A. If it's permissible.

21 Q. They can include water crossings?

22 A. Yes.

23 Q. They disturb the surface of the
24 terrain; do they not?

25 A. Yes.

1 Q. They can disturb wildlife; can they
2 not?

3 A. They could.

4 Q. They can affect the remoteness of
5 tourism facilities; can they not?

6 A. I don't know that tertiary roads
7 would do that. Certainly primary and secondary roads
8 would be there first but, yes, they do.

9 Q. They can include the potential for
10 erosion; can they not?

11 A. The potential, yes.

12 Q. In other words, don't they largely
13 entail the same environmental effects potentially as
14 primary and secondary roads but only in theory over a
15 shorter time frame?

16 A. Potentially, yes.

17 Q. So...

18 A. But certainly not to the same degree.

19 Q. Do you agree with that statement, Mr.
20 Adamson?

21 MR. ADAMSON: A. The statement regarding
22 the potential environmental effects of tertiary roads
23 to water crossings?

24 Q. Right.

25 A. I am not an expert on effects but,

1 yes, that is what I believe, that they have the
2 potential the same as other water crossings.

3 Q. They have the potential to have the
4 same degree of environmental effect as primary and
5 secondary roads; do they not?

6 A. They do, yes. I think as a general
7 statement though they probably cause less disturbance
8 to the environment. The geometric standard is lower so
9 there is less disturbance and less fuel building and
10 things like that. So in relative terms there may be
11 less potential effects.

12 Q. Now, as you said in your previous
13 testimony at page 19797:

14 "Section 2.2 of the guidelines explains
15 that it applies to all roads including
16 tertiary roads. The reason for that is
17 because the potential negative effects of
18 a poorly built water crossing can occur
19 on any standard of road, any geometric
20 standard of road. A poorly built water
21 crossing on a winter road that is only
22 there for a few months can be quite
23 significant. So it applies on all
24 roads."

25 A. Yes, that's right.

1 Q. So some potential effects on tertiary
2 roads are as serious as on primary and secondary roads?

3 A. Yes, if the proper methods aren't
4 followed.

5 Q. Now, Mr. Tenaglia, I take it, and I
6 know we are going to deal with road planning in Panel
7 15 as well, but I think there are some issues that
8 should be raised here. Mr. Tenaglia, I take it you
9 have been involved in planning timber access roads;
10 have you not.

11 MR. TENAGLIA: A. I have been involved
12 in timber management planning process extensively, yes.

13 Q. So you have been involved in the
14 process including planning of primary and secondary
15 roads?

16 A. Yes.

17 Q. On Crown management units?

18 A. And FMAs.

19 Q. And FMAs. Now, in your experience,
20 is there any difference in the planning requirements
21 regarding primary and secondary roads on Crown
22 management units?

23 A. Primary and secondary roads.
24 Certainly we have the legal requirement to follow the
25 Exemption Order 11-9, which means we have to do

1 additional planning for primary roads on Crown
2 management units.

3 Q. All right.

4 A. That's identified in the Class EA for
5 Class Environmental Assessment for MNR facilities and
6 we have to follow the field environmental--

7 Q. Access roads to MNR facilities.

8 A. Yes. We have to follow the field
9 environmental planning procedure.

10 Q. Now, that is applied to such famous
11 roads, for example, as the Red Squirrel Road in the
12 Temagami area; is that not correct?

13 A. I don't know.

14 Q. Okay. Well, I take it then that when
15 you are planning for roads you are really dealing still
16 with two different planning approaches, one under that
17 class EA with respect to primary roads - only on Crown
18 management units now - and this process with regard to
19 secondary roads; is that right?

20 A. That's correct.

21 Q. And what are the -- what is the
22 difference in practice between using one or the other
23 planning process, in your experience?

24 A. There certainly is, if I recall
25 correctly, the requirement to carry out a full -- the

1 FEPP, the field environmental planning procedure and to
2 do the checklist. There is a certain checklist that we
3 have to complete for all road options and the
4 alternatives. That is not required in the new
5 procedure -- in the draft or in the Document 4.

6 Q. Right. And there is no area of
7 concern planning process under the Class EA for access
8 roads to MNR facilities; right? In reading the
9 document I didn't see any reference to areas of concern
10 in that process.

11 A. I believe you are correct.

12 Q. So when you are planning a primary
13 access road on a Crown management unit at this point,
14 do you in any event refer to areas of concern?
15 Certainly that is the impression I got from that
16 testimony.

17 A. Yes, of course. We certainly have to
18 identify all the areas of concern. What we are really
19 doing is blending those -- these two planning
20 processes, this draft or Document 4 and the new timber
21 management planning manual with the legal requirements
22 under the approved Class EA. We are just bringing them
23 together in all our new timber management planning
24 processes.

25 Q. So you are actually planning primary

1 access roads on Crown management units according to
2 this process as well; is that what you are saying?

3 A. Yes. And any requirements under the
4 Class EA -- the approved Class EA are indeed met and
5 introduced into the planning process.

6 Q. And will we see that reflected in the
7 management plans for those units?

8 A. I believe so.

9 Q. Well, is it your practice to identify
10 in the management plans the elements that are done in
11 compliance with the other planning process?

12 A. Yes.

13 THE CHAIRMAN: Witnesses, are we going to
14 see or, Ms. Blastorah, are we going to see a copy of
15 what the requirements are under the approved Class EA
16 for access? Has that been filed?

17 MR. FREIDIN: I think they are already
18 filed in Exhibit No. 21 which is the Exemption Order
19 11-9 under which timber management has been operating
20 since 1976. So there are requirements in there.

21 THE CHAIRMAN: And does that have the
22 list referred to by Mr. Tenaglia?

23 MS. SWENARCHUK: No, it does not.

24 THE CHAIRMAN: The checklist?

25 MS. SWENARCHUK: Mr. Freidin, you are not

1 saying that the other Class EA has been filed; are you,
2 as an exhibit? You are saying just that Exhibit --
3 that Exemption 11-9 was filed; isn't that right?

4 MR. FREIDIN: Correct.

5 THE CHAIRMAN: Well, how might we as a
6 Board be able to compare what Mr. Tenaglia just said
7 with the requirements under this Class EA, Exhibit No.
8 4?

9 MS. SWENARCHUK: If I might, Mr.
10 Chairman, I would suggest that it would be helpful to
11 the Board to be provided with that Class EA. The
12 timber management plan that is the model to be used in
13 Panel 15 is a Crown management unit and presumably that
14 planning process applies to those primary access roads.

15 MR. FREIDIN: Mr. Chairman, we are going
16 to be preparing, I think at the Board's request, the
17 comparison of the old and the new.

18 THE CHAIRMAN: And that will include
19 that?

20 MR. FREIDIN: Yes. Let me just check
21 with my people and see whether we can put something
22 together that will deal with the issue of roads as well
23 as the other matter that we are going to -- it might
24 very well be that they are preparing something in
25 relation to roads right now.

1 THE CHAIRMAN: Is that the subject
2 matter -- the entire subject matter of this earlier
3 approved Class EA, access roads?

4 MS. SWENARCHUK: It is a Class EA for
5 access roads to MNR facilities, yes.

6 THE CHAIRMAN: So that if you prepared a
7 comparison of what is contained in that Class EA in
8 terms of requirements with what you are now proposing
9 under the Class EA before the Board--

10 MR. FREIDIN: The planning of access
11 roads, yes.

12 THE CHAIRMAN: --that would give us that
13 comparison?

14 MR. TENAGLIA: Yes, it will.

15 MS. SWENARCHUK: Q. Now, these witnesses
16 are not appearing on Panel 15 to my knowledge and I
17 would like to ask Mr. Adamson, who is a Ministry
18 engineer, and has been involved in planning -- or
19 constructing primary access roads for some time,
20 according to his CV, that from your perspective as an
21 engineer are there any differences and what are the
22 differences that those planning processes create in
23 your work with regard to primary roads on Crown
24 management units and primary roads elsewhere?

25 MR. ADAMSON: A. I don't think I am

1 qualified to talk about the planning aspects, but
2 certainly the operational aspects I can comment on.

3 Q. Go ahead.

4 A. I think we now have environmental
5 standards that have been developed for the new --

6 Q. Excuse me. My question is
7 historical.

8 A. Yes.

9 Q. Up to now, has there been a real
10 difference in your experience between the planning of
11 primary access roads and its effect on your work on
12 Crown management units or primary access roads anywhere
13 else; is there a functional difference going on in the
14 way these things are planned and carried out or not?

15 MR. FREIDIN: He indicated that he can
16 deal with the operational end and indicate how they are
17 carried out through construction, but he's not
18 qualified to deal with the planning aspects.

19 MS. SWENARCHUK: Q. I simply want it to
20 be clear that I am looking at current practice as
21 opposed to standards that are going to be implemented
22 for the future, Mr. Adamson.

23 MR. ADAMSON: A. Well, I think the
24 current standards are the implementation of these
25 processes that we started April 1st, the review of

1 water crossings, the checking of bridges. We are
2 actively involved in those right now.

3 Q. All right. From your perspective as
4 an engineer then, during the time of your career,
5 during the time that you have constructed 200
6 kilometres of primary access roads, I take it that
7 these two planning processes have not made any
8 difference for you in carrying out those functions; is
9 that correct, you never had to worry about that or it
10 wasn't part of your experience?

11 A. No, I'm not involved directly in the
12 planning process at all.

13 Q. Okay. So given that they include
14 different approaches to environmental protection --

15 MR. FREIDIN: Did you say assuming?

16 MS. SWENARCHUK: I said given.

17 Q. Let's say assuming, there has been no
18 difference in practice for you in constructing roads
19 under the two approaches?

20 MR. ADAMSON: A. Again, in the
21 operational side there has been, yes.

22 Q. Okay. What are those differences?

23 A. Well, you know, as I mentioned we now
24 have standards that must be followed on all roads and
25 that applies to Ministry roads as well as industry

1 roads and I think we also have tools in place now for
2 staff to follow.

3 Q. Let me be more clear with you. I am
4 talking about the time period between 1976 and April
5 1st of this year.

6 Let's leave these guidelines out of the
7 question for the moment. I am looking simply at how
8 these two different planning processes in that time
9 period impacted on your work as a Ministry engineer.
10 Perhaps there was no difference.

11 A. Well, certainly there has been an
12 increased emphasis on reviewing water crossings that
13 predates this. Whether it relates to the management
14 process change or not I can't say.

15 Q. Okay. When does that date from?

16 A. Around 1986.

17 Q. Any other differences you could
18 enumerate?

19 A. Certainly a greater degree of public
20 involvement, the greater need for mitigation techniques
21 to resolve identified concerns. We have worked with
22 districts on developing those sort of things.

23 MR. TENAGLIA: A. If I might, I can
24 elaborate for the Board what -- step-by-step what the
25 differences are between the two processes and...

1 MS. SWENARCHUK: We can get into this now
2 or we can leave it for Panel 15.

3 THE CHAIRMAN: I think it would probably
4 be more productive in Panel 15, particularly if we have
5 this so-called chart to use as a comparison.

6 MS. BLASTORAH: Can I have a moment, Mr.
7 Chairman.

8 Mr. Chairman, I might just suggest that
9 since there has been a considerable amount of
10 discussion about it now, and the transcript may be a
11 little muddy right now, if Mr. Tenaglia has something
12 that he can offer as a thumbnail sketch of the
13 differences between the two - they could then be
14 elaborated on in Panel 15 - I think it might be helpful
15 at this point.

16 MS. SWENARCHUK: Well, I disagree, Mr.
17 Chairman. I don't want to get into cross-examining Mr.
18 Tenaglia on something that brief, if it's not something
19 that has been dealt with in detail, I would just as
20 soon leave the whole subject for Panel 15.

21 MS. BLASTORAH: Mr. Chairman, if Ms.
22 Swenarchuk --

23 THE CHAIRMAN: I think in fairness, Ms.
24 Blastorah, that if we are awaiting some more evidence
25 on what the differences are, going back to the past

1 approved Class EA, that it is unfair for Ms. Swenarchuk
2 to be put in the position of cross-examining these
3 witnesses on that at this time.

4 So perhaps we will wait until we get all
5 of the evidence before us in direct testimony.

6 MS. BLASTORAH: That's fine, Mr.
7 Chairman. If Ms. Swenarchuk would rather have it later
8 rather than sooner, that's fine.

9 MS. SWENARCHUK: Q. Just one last
10 question for Mr. Adamson. I notice in your
11 bibliography at page 216 you haven't referred to the
12 other Class EA, so I take it it's not something that
13 you have to deal with on a very frequent basis?

14 MR. ADAMSON: A. Oh, in the list of
15 references, the bibliography?

16 Q. Right.

17 A. That's correct, yes.

18 Q. Okay. Mr. Adamson, in your
19 testimony, if you wish to turn to the page 19767, lines
20 16 to 21.

21 A. Pardon me, 1976...?

22 Q. 19767, lines 16 to 21. I will just
23 read the paragraph:

24 "The Ministry has recently introduced a
25 multi-purpose work permit which is going

1 to serve as the authorizing document
2 for approvals under each of the Acts..."
3 enumerated above: Forest Fire Prevention Act, Lakes
4 and Rivers Improvement Act, and the recently amended
5 Public Lands Act.

6 "The documentation of all water crossings
7 will now appear in the application for a
8 work permit and in the work permit that's
9 issued."

10 So that's presumably in process now; is
11 it?

12 A. Yes. I don't believe that was my
13 evidence, I believe it was Mr. Tenaglia, but that's in
14 process now.

15 Q. My apologies. Are these forms
16 available to the public?

17 MR. TENAGLIA: A. The application forms?

18 Q. Yes.

19 A. Yes, they are.

20 MS. BLASTORAH: Mr. Chairman, Ms.
21 Swenarchuk wasn't here and she may not be aware of it,
22 the actual application and the work permit itself were
23 filed as an exhibit.

24 MS. SWERARCHUK: Yes.

25 MS. BLASTORAH: And it was pointed out

1 during the cross-examination of Mr. Edwards that it
2 reads on its face that they're public documents.

3 MS. SWENARCHUK: Thank you, Ms.

4 Blastorah. Shall I direct the remaining questions to
5 you as well?

6 MS. BLASTORAH: I am just trying to be
7 helpful, Ms. Swenarchuk.

8 THE CHAIRMAN: Well, Ms. Swenarchuk, I
9 think if counsel wants to clarify something in an
10 attempt to assist you, it's not necessary to respond in
11 that fashion.

12 MS. SWENARCHUK: All right.

13 Q. Mr. Tenaglia, these forms will apply
14 as well to FMA road construction; is that correct?

15 MR. TENAGLIA: A. Yes.

16 Q. Okay.

17 A. And any other road construction,
18 whether it's timber or other.

19 Q. Now, if you turn to page 19776 at
20 line 11 and 12, you indicate that the form -- the work
21 permit may include:

22 "Conditions or restrictions related to
23 the areas of concern which are contained
24 in the timber management plan, are going
25 to be transferred to the work permit. On

1 the other hand, a work permit may include
2 any other conditions which are over and
3 above those identified in the timber
4 management plan in order to enhance, I
5 guess, the protection of the specific
6 value where that particular crossing may
7 occur."

8 Now, what types of additional conditions
9 are you referring to?

10 A. I guess it's the site-by-site
11 specific conditions that would be applied that the
12 timber management plan may not address and some of the
13 good management practices which, as a result of the
14 field inspection, the engineer or the forester or the
15 biologist may feel are appropriate for that particular
16 site.

17 Those are the kind of conditions that
18 would probably not appear on the timber management plan
19 but would appear in the work permit.

20 Q. Could you give me an example of the
21 type of condition you have in mind?

22 A. Maybe Mr. Adamson can from an
23 engineering and from protection of the water quality
24 perspective.

25 MR. ADAMSON: A. Examples might be that

1 the gravel backfill to a culvert has to come from a
2 specific pit because it's the particular type of
3 material that's needed to ensure it's erosion resistant
4 or it may relate to the structure itself, the elevation
5 of a culvert, for example, or length of a bridge or the
6 elevation of a bridge.

7 Q. Are you aware whether there are
8 permits -- have you been involved in the issuing of
9 permits since the policy was initiated earlier this
10 year?

11 A. No, that's done at the district
12 level, but I've been involved in making recommended
13 conditions of approval.

14 Q. And have those in any case included
15 conditions over and above those identified in the
16 timber management plan?

17 A. Yes, they're more site-specific.

18 Q. Now, Mr. Adamson, I believe the
19 forest industry and the Ministry of the Environment
20 were involved with the Ministry of Natural Resources in
21 drawing up the environmental guidelines; is that
22 correct?

23 A. In reviewing drafts of the document,
24 yes.

25 Q. And is that the extent of their

1 involvement in both cases, reviewing drafts?

2 A. Yes, reviewing drafts in a committee
3 atmosphere that allowed discussion amongst the
4 different people that were there on the committee. The
5 actual writing of the document, I wrote the document.

6 Q. Now, you indicated with regard to the
7 environmental guidelines at 19799:

8 "I won't go through all the mandatory
9 standards but these are taken very
10 seriously and will be monitored very
11 closely."

12 Have additional staff been required or
13 retained for this increased monitoring?

14 A. Well, I'm aware of one district that
15 has acquired additional staff. I'm also aware of other
16 districts that have reassigned priorities to make
17 ensure that staff carry out this function.

18 Q. How many districts could you
19 enumerate?

20 A. In terms of increased inspection?

21 Q. Mm-hmm.

22 A. I think all districts.

23 Q. And this is within the time period
24 since the spring; is that right?

25 A. Yes. More intensively this year, but

1 also in the last few years.

2 Q. Now, again at page 19799, referring
3 to the environmental guidelines, you indicated that:

4 "Pages 13 through 36, it's a total of 20
5 pages, are good practices for roads and
6 water crossings that should be followed
7 if possible and if appropriate and, as I
8 mentioned, these can be made mandatory in
9 specific instances where needed for a
10 particular site."

11 Now, if you could clarify that for me.

12 Are you indicating then that these practices are not
13 mandatory unless so specified in a particular instance?

14 A. They're recommended good practices.
15 It may not be suitable in all cases, therefore, they
16 are not of the same caliber as the mandatory standards.

17 Q. So who will decide when a particular
18 standard is mandatory in a specific site?

19 A. It would be part of this prescription
20 that's developed to deal with an area of concern, and
21 then go on the work permit that's issued for that
22 project.

23 Q. So you have -- so that sentence then
24 applies to areas of concern. Does it apply to areas
25 outside of areas of concern?

1 A. I can't think of where it would
2 because water crossings are areas of concern and
3 generally that's where these extra standards might be
4 specified.

5 Q. Now, at page 124 of the witness
6 statement in the last paragraph you have indicated
7 that:

8 "Each timber company has their own
9 geometric road standards which define all
10 or some of the criteria listed above:"
11 Minimum ditch depth, culvert size,
12 maximum aggregate size, minimal gravel depth.

13 "These criteria are often incorporated
14 into forest management agreements or cost
15 sharing agreements as a means of defining
16 in measurable terms the performance
17 expectations of a given road."

18 Are you indicating there then that the
19 Ministry reviews the company's geometric road
20 standards?

21 A. It does so if they're incorporated
22 into agreements.

23 Q. So that would be on FMA areas?

24 A. FMA areas or other cost sharing
25 agreements. There are others besides FMAs.

1 Q. Does industry have the full
2 discretion to decide which class of road will be built
3 in a given area?

4 A. I'm not sure. Serge might be better
5 to answer that.

6 MR. TENAGLIA: A. No, not necessarily.
7 It may be a concern, there may be other user's concerns
8 in a particular matter that -- in terms of geometric
9 standard, is that what you are referring to?

10 Q. Yes, yes.

11 A. Yes, there may be some other user's
12 concern that may dictate that a company may require --
13 may have to build a secondary road as opposed to a
14 primary road.

15 And a good example that comes to mind is
16 a road on the Magpie Forest where, as a result of the
17 other users, primarily members of NOTOA, they had
18 requested that a road which, in terms of
19 classification, would be primary, they wanted it to be
20 a secondary standard -- built to a secondary standard,
21 geometric standard and the company reluctantly agreed
22 to build that road to a secondary standard.

23 Q. So that came at the request of a
24 NOTOA member, but the Ministry presumably was involved
25 in that decision process; is that right?

1 A. That's correct.

2 Q. So then are you indicating that the
3 Ministry again can dictate to a company that a road be
4 built to a certain standard?

5 A. Well, this is I guess a consultive
6 process and the industry was consulted--

7 Q. And agreed?

8 A. --and certainly the other users were
9 consulted. It's still a primary road in terms of --
10 for classification for planning purposes.

11 The company needed to go in there and I
12 guess felt that this was an issue that the outfitters
13 really felt was going to satisfy their concerns and so
14 they, I guess, conceded the point at some risk to the
15 people that are operating up there, because if you
16 don't build a road to the standard for safety reasons
17 to accommodate the kind of traffic that a road has to
18 carry, then you could potentially put the people at
19 risk.

20 And, in this particular case here, we're
21 putting a great deal -- or the company is putting a
22 great deal of traffic and volume over a secondary road,
23 a geometric road which should really have been a
24 primary road -- to a primary road standard.

25 And I believe it's really a perception

1 that -- of some of the local people that the perception
2 was, if it's built to a secondary standard, they would
3 have better control over that road.

4 Q. But it wouldn't be permanent; is that
5 the concern?

6 A. Yes. Well, better controls and
7 permanency as part of the plan.

8 Q. Or could it work the other way that
9 the company wants to build a secondary road and the
10 Ministry for some -- could the Ministry insist that a
11 road be built to a higher geometric standard for some
12 purpose of environmental protection?

13 A. That's very conceivable, yes, or for
14 the purpose of other users wanting to use a particular
15 area, and that's something again that would be
16 negotiated with forest industry or the particular
17 company involved.

18 Q. Okay. Could we look at page 138, the
19 last paragraph of -- the last sentence of paragraph
20 4.3, the paragraph is concerned with construction
21 specifications, and the last line says:

22 "When roads are built in-house the road
23 builders do not usually work to any
24 specifications."

25 Could you explain for me what is meant by

1 that?

2 MR. ADAMSON: A. There was two
3 interrogatories on this issue I think. What I meant by
4 specifications was, as referred to here, such as the
5 Ontario Provincial Standard Specifications, the type
6 that would go into a construction contract between an
7 owner and a contractor to produce an end result.

8 Where roads are built in-house; in other
9 words, a Ministry has its own foreman on the job or a
10 timber company has their own staff supervising the
11 equipment, and sometimes the equipment operators also
12 work for the company, generally there aren't detailed
13 specifications provided to those people. They're
14 trained, they're experienced road builders and they
15 have the knowledge needed to build the road, but they
16 aren't expected to build to specifications like the
17 Ontario Provincial Standard Specifications.

18 Q. So they have the specifications in
19 their head; is that the idea?

20 A. In their head and in manuals and
21 guidance is provided.

22 Q. All right. I would like to turn now
23 to the Ministry of Environment Interrogatory No. 16.

24 THE CHAIRMAN: Is this a new area?

25 MS. SWENARCHUK: Pardon me?

1 THE CHAIRMAN: Is this a new area? Is
2 this a convenient time for an afternoon break?

3 MS. SWENARCHUK: It could be. I will
4 carry on with this area for some time yet, so...

5 THE CHAIRMAN: Okay. Let's take a break
6 for 20 minutes.

7 Thank you.

8 ---Recess taken at 2:30 p.m.

9 ---On resuming at 3:00 p.m.

10 THE CHAIRMAN: Thank you. Be seated,
11 please.

12 MS. SWENARCHUK: Q. Mr. Adamson, just a
13 couple of brief points first of all. Back to the
14 question of in-house road building. Are most roads
15 within this category -- would you classify most roads
16 as being built in-house forest access roads?

17 MR. ADAMSON: A. Yes, I would say most
18 are built in-house.

19 Q. Okay.

20 A. And also I referred to an
21 interrogatory on this subject and I've located it here,
22 it's Exhibit 688-09.

23 Q. Page 9, okay. And one more small
24 point. Are we to take it from your testimony that
25 every water crossing on a road will be an area of

1 concern?

2 A. Yes. That's what I understand, yes.

3 Q. Mr. Tenaglia?

4 MR. TENAGLIA: A. The same question?

5 Q. Yes. In the planning process do you
6 create an area of concern for every water crossing?

7 A. If the water crossing is identified
8 through -- given the MOE guidelines for identifying
9 water, yes.

10 Q. Meaning the Fish Habitat Guidelines?

11 A. Yes.

12 Q. Right. So that's the document that
13 governs?

14 A. Yes. That's intermittent streams,
15 all the streams that show up on the 1:50,000 topo
16 maps -- or the topography maps.

17 Q. All right.

18 A. Or any other waterbodies if they
19 don't show up -- that for some reason don't show up and
20 the planning team feels that it's an area of concern.

21 Q. Now, Mr. Adamson, you say at page 178
22 that:

23 "It is expected that engineering
24 standards for water crossings will be
25 adopted by the OMNR and the forest

1 industry in the near future."

2 Now, are those standards being developed
3 now?

4 MR. ADAMSON: A. This is in reference to
5 page 178 of the evidence?

6 Q. That's right. Structural Adequacy,
7 paragraph (c).

8 A. Oh. Yes, those are the standards
9 that are contained in the Crown Land Bridge Management
10 Report which is exhibit...

11 Q. Those are in effect now then; are
12 they?

13 A. Exhibit 686. Yes, they are in effect
14 April 1st, 1989.

15 Q. Now, Mr. Adamson --

16 THE CHAIRMAN: Are you going to be on
17 these pages for very long?

18 MS. SWENARCHUK: No.

19 THE CHAIRMAN: The reason is, is two of
20 the Board members are missing six pages of this witness
21 statement. Mine appears to be complete, but the others
22 aren't, including this page 178.

23 MS. SWENARCHUK: I see. I was moving on
24 from the page, Mr. Chairman.

25 THE CHAIRMAN: Okay.

1 MR. HUFF: (handed)

2 MS. SWENARCHUK: Q. Looking back at your
3 direct testimony, Mr. Adamson, at page 19836 starting
4 at line 3 you had been talking about issues that affect
5 the location of roads and you indicate at 19836, line
6 3, and following:

7 "Where changes are made from the lowest
8 cost alignment, say as a prescription
9 for an area of concern, there will always
10 be an increased cost to build the road
11 to move off of that lowest alignment."

12 Now, in your experience, is there a
13 practice within the Ministry of moving the road off the
14 lowest cost alignment for environmental reasons that
15 aren't related to an area of concern such as, for
16 example, road building in areas of shallow soil or
17 bedrock, that kind of question?

18 MR. ADAMSON: A. I think that would be
19 taken into account in where is the lowest cost routes.
20 Like, that's not a favourable route to build on where
21 there's no soil. So it would tend to follow the lowest
22 cost construction location that meets the objectives of
23 the road. I don't know if I answered your question.

24 Q. So then, I just want to be clear, you
25 are saying then that -- or I will rephrase the

1 question.

2 If that weren't the case, if it weren't
3 the lowest cost alignment, are you aware of any
4 instances where road alignments have been changed for
5 environmental concerns outside of areas of concern?

6 A. Not outside areas of concern but, as
7 we talked about earlier, years ago there weren't such a
8 thing as areas of concern. We've moved road alignments
9 to protect environmental values, they weren't called
10 areas of concern though.

11 Q. So now that would be largely a matter
12 of what is taking care of through the area of concern
13 process?

14 A. I would think so, yes.

15 MR. TENAGLIA: A. Certainly roads would
16 be relocated if we encounter an area of concern that
17 wasn't documented in the timber management plan, such
18 as an osprey's nest or an eagle's nest that had not
19 been identified to the planning process.

20 And I think there is a number of examples
21 like that where the road -- the preferred road
22 alignment was subsequently changed.

23 Q. Okay. Mr. Adamson, at page 208 - I
24 believe this is still Adamson - the last line of the
25 page reads:

1 "Use of chemicals for brush control is
2 not widespread. Less than 50 hectares
3 (125 acres) were treated by this method
4 in 1986."

5 Now, is this an area -- roads on an area
6 of 50 hectares, or is it comprised of 50 hectares made
7 up of a narrow strip along miles of road?

8 MR. ADAMSON: A. I can't say for sure.

9 Q. Okay.

10 A. I asked the question and that was the
11 answer I was told.

12 Q. Perhaps you could clarify that for
13 us?

14 A. All right.

15 Q. And could you indicate what products
16 are used in herbicide brush control?

17 A. All right, I'll find out.

18 Q. Okay, thank you. Could you give us
19 the figures for '87 as well for the hectares sprayed,
20 please?

21 A. I'll find out if they are available,
22 yes.

23 Q. Okay. Now, Mr. Tenaglia, I assume
24 that MNR is concerned with cost effectiveness in road
25 building; is it not?

1 MR. TENAGLIA: A. That certainly is a
2 consideration in selecting corridors.

3 Q. Now, how do you determine cost
4 effectiveness in building roads?

5 A. The planning process requires that we
6 identify the costs of the road, the physical cost of
7 constructing the road, transportation costs and
8 maintenance costs.

9 In terms of actually addressing cost
10 effectiveness, we don't really do that. I guess the
11 problem being is there's just too many parameters that
12 one would have to try to assess or put a value on that
13 I guess the process would be very questionable.

14 You know, how do you put a value on the
15 moose that may be killed off of that road, how do you
16 put -- if there's a negative value, how do you put a
17 positive value for the tourism industry, the road
18 accessible tourism industry that uses that road.

19 Q. So you don't do cost benefit analyses
20 that would consider those sorts of factors and all the
21 other factors involved?

22 A. Generally not. I believe there has
23 been some cases where cost benefit analysis have been
24 carried out though.

25 Q. Do you know where that was?

1 A. I think Mr. Pyzer has an example.

2 MR. PYZER: A. Actually not very many
3 examples, and I think Allison Coke spoke to kind of the
4 socio-economic problems with cost benefit analysis.

5 I guess the key that we would make here
6 is that we're delivering objectives of other programs
7 and so we tend to maximize from the perspective of
8 maximizing what wildlife wants or delivering the fish
9 management objectives we would look at those sorts of
10 things, but in terms of true cost benefit analysis, we
11 don't do that.

12 Q. Okay. Do you do any -- Mr. Tenaglia,
13 does MNR do any analysis of whether the value of the
14 wood to be extracted justifies the road building costs?

15 MR. TENAGLIA: A. I believe the forest
16 industry or the company that would be responsible for
17 building that road would certainly look at that, and I
18 believe there is an example of that particular case in
19 the Red Lake plan and that, I imagine, would be
20 addressed by Panel 15.

21 Q. Is that the normal practice, to
22 consider the actual value of the wood to be extracted
23 in deciding whether a road is to be built?

24 A. In terms of looking at alternatives,
25 yes.

1 Q. An actual calculation of the value of
2 the wood?

3 A. Well, there certainly was done -- one
4 done for the Red Lake plan.

5 Q. Is it the normal practice?

6 A. I'd have to say not, but I can't
7 say -- I believe the forest industry would have to more
8 specifically address that in terms of, in the plans
9 that we see they have not identified in detail the
10 pluses and my minuses for any specific alternative.

11 Q. What about the road building that the
12 Ministry does?

13 A. No, we don't.

14 MR. PYZER: A. I'm sorry. No we don't
15 what? Or I'm sorry, I'm not sure what that question
16 was.

17 Q. My question was: In road building by
18 the Ministry, does the Ministry actually calculate the
19 value of the wood to be extracted and compare that in
20 some way to the cost of the road being constructed?

21 MR. PYZER: A. Yes, in cases we do.

22 I can think of an example very recently
23 just north on the Minaki Crown, the Jill Lake Road
24 which we did not build simply because the amount --
25 given the amount of wood and the amount of road.

1 Q. I asked Mr. Tenaglia if that was --
2 would you say, Mr. Pyzer, that this is the normal
3 practice with road building by the Ministry?

4 A. Yes, I would say that is normal, that
5 you wouldn't spend more money than you are going to get
6 off in terms of a return. I would say that is normal.

7 Q. Well, I think we have a difference of
8 views here, Mr. Tenaglia?

9 MR. TENAGLIA: A. No, we don't we go
10 through that particular exercise. My experience has
11 been that we have not gone through that particular
12 exercise of calculating it. I think we certainly look
13 at and it's not difficult to look at whether building a
14 million dollar road and we only have a hundred cords at
15 the end of the road, whether that is feasible or not.

16 MR. PYZER: A. That was the point I was
17 trying to make as well. When it gets down to that very
18 fine line, that's when you do sharpen the pencils and
19 say: Does this become economically viable. But when
20 you are looking at a primary or a secondary road and
21 you know that there is million and a half cords of wood
22 at the end of it and it's going to cost you "x" number
23 of dollars, 99 per cent of the time you don't have to
24 sit down with any kind of a model or calculation to
25 know that the road is a worthwhile expense from a

1 forestry perspective.

2 Q. Mr. Adamson, you have been involved
3 in negotiating road subsidies with companies; have you
4 not?

5 MR. ADAMSON: A. I have been involved in
6 part of the negotiation, yes, the operational end,
7 broad project approval.

8 Q. Maybe you could clarify this for us.
9 At page 15 of the witness statement, which is your CV
10 or part of your CV, with respect to company roads it
11 says that you have been responsible for negotiating and
12 administering agreements with timber companies under
13 FMSA which is...?

14 A. The forest management subsidy
15 agreement.

16 Q. And NORTC program.

17 A. Which is the Northern Ontario
18 Resources Transportation Committee.

19 Q. Okay. And subsidies totalling
20 6.2-million were paid for construction of 220
21 kilometres of road and 9 bridges.

22 Now, with respect to these road projects,
23 were analyses done of the value of the wood to be
24 extracted by the roads planned?

25 A. Yes, in both cases they are a cost

1 sharing program.

2 Q. Yes.

3 A. Administered by groups -- by
4 committees.

5 Q. And who are the parties sharing the
6 cost?

7 A. The timber company and the province
8 and, in the case of the forest management subsidy
9 agreement, it was Canada, Ontario and the timber
10 harvesting company.

11 Q. Those agreements have to do with
12 forest management agreement areas; is that right?

13 A. No. Well, this predates the forest
14 management agreements.

15 Q. All right.

16 A. So in those cases the committees that
17 were responsible for the programs, for the allocation
18 of funds, they reviewed project proposals that
19 contained the benefits of the project and weighed the
20 priorities of the different projects that were
21 submitted and made decisions to: We are going to
22 support this particular program, and then at that point
23 our section was responsible for preparing the
24 agreements and administering them.

25 Q. All right. And did those projects

1 that you reviewed include projections of the value of
2 the wood to be extracted?

3 A. Projections in terms of volumes of
4 wood, yes. I don't believe in terms of dollars but in
5 volumes of wood, certainly.

6 Q. Mr. Tenaglia, in planning roads and
7 alternate routes, I assume that cost is an important
8 factor from the beginning; is it not?

9 MR. TENAGLIA: A. Yes, it is and that is
10 one of the parameters that have to be identified.

11 Q. And it would be only sensible that
12 you identify it right when you are planning
13 alternatives?

14 A. Yes.

15 Q. And it would undoubtedly be a factor
16 in which alternative you choose?

17 A. One of the factors.

18 Q. And is it your practice to have an
19 economic analysis of the alternatives before an option
20 is chosen, for example, at least some understanding of
21 the cost of the various alternate routes before you
22 choose one?

23 A. Yes, the costs of the road, yes.
24 Cost of building that road.

25 Q. Mr. Tenaglia, I would like you to

1 look at a letter received by Mr. Huff from the Lanark
2 area with respect to the process for constructing roads
3 and I would like you to tell me if, in your view, this
4 is the usual process for economic considerations in
5 road building?

6 THE CHAIRMAN: Mark this as Exhibit 781.

7 MS. SWENARCHUK: (handed)

8 THE CHAIRMAN: Thank you.

9 ---EXHIBIT NO. 781: Letter addressed to Mr. Don Huff
10 dated June 29, 1987.

11 MS. SWENARCHUK: Q. I am particularly
12 concerned with the paragraph at the top of page 2 of
13 the letter.

14 MR. TENAGLIA: A. And your question
15 again, was...?

16 Q. Well, what concerns me about this
17 approach to planning is the statement that:

18 "...no economic justification for any of
19 the options..." the different corridors:
20 "...were presented at this...time.

21 Should the Planning Team decide on an
22 option, this type of justification could
23 be done."

24 Which suggests that the economic
25 justification is done after the option is chosen.

1 "However, if you wish to perform a basic
2 cost analysis on the options, the best
3 analysis is - the longer the road, the
4 more it costs."

5 I guess that's true, but what I was
6 hoping to see in Ministry planning would be a cost
7 analysis that would take into account a little more
8 than just length of the road.

9 So, in your view, is this representative
10 of how Ministry roads are planned?

11 A. No, no, it isn't. I really don't
12 know what Mr. Murray means by economic justification,
13 whether the cost of the road was presented at that
14 information centre or not.

15 If he is referring to cost/benefit
16 analysis, then that's correct, that information would
17 not be available. Is -- you know...

18 Q. And would you agree with me that
19 doing your economic analysis after you have chosen an
20 option is backwards?

21 A. If you were required to do the
22 economic analysis, yes, but I don't know what the
23 acting district manager meant by economic justification
24 whether in fact that was just road construction cost or
25 a full cost/benefit analysis.

1 Q. Did I hear you say if you are
2 required to do -- I'm sorry, I didn't hear the exact
3 words.

4 A. If we were required to do a
5 cost/benefit analysis, yes, it would be more
6 appropriate to do it before you display options.

7 Q. Isn't that even the case if you are
8 simply doing a costing process, that you want to know
9 the cost of all the options as part of choosing one?

10 A. Sure.

11 Q. Rather than choosing one and then
12 looking at the economics?

13 A. Sure, because the cost of that road
14 is -- the cost of building that road will help you
15 decide which alternative to select.

16 Q. Mr. Adamson, turning again to your
17 experience in administering -- negotiating and
18 administering agreements with timber companies and
19 subsidies, to your knowledge or in your experience is
20 the availability of subsidies sometimes a factor
21 influencing whether a road will be built?

22 MR. ADAMSON: A. Yes, I believe so in
23 some cases.

24 Q. And have you had any experience in
25 administering the subsidy program under the FMA

1 program?

2 A. No, not directly.

3 Q. Have you had any experience with cost
4 issues related to building roads on FMAs?

5 A. Again not directly, no.

6 Q. Okay. Have you been involved at all
7 in building roads on FMAs?

8 A. No. Occasionally I will discuss
9 issues with the foresters that are involved, but not --
10 I am not directly involved with that program.

11 Q. Mr. Ward -- Mr. Adamson, in the
12 programs that you administered - one more question for
13 you - in the programs that you administered, were the
14 subsidies paid out related to the costs of the
15 particular roads being constructed or were there flat
16 rates that were provided across the board?

17 A. In these two programs they were
18 handled differently. The forest management subsidy
19 agreement, there was an agreement reached before
20 construction started on what the rate should be for
21 that particular section of road, that was based on
22 terrain difficulty and the specifics of that location,
23 and once the two parties agreed that this road should
24 cost this much money, that is what the cost sharing
25 arrangement was based on.

1 In the case of the NORTC program it's
2 based on actual costs up to a ceiling amount.

3 Q. Could you explain that further?

4 A. The company would build the road and
5 usually the subsidy or the cost sharing amount is 50
6 per cent, so they would provide receipts or equipment
7 hours, charge-out rates, that sort of information that
8 was actually spent on that road and they would be
9 provided to the Ministry person responsible and they
10 would certify that that amount was reasonable and then
11 50 per cent cost sharing would be approved.

12 Q. But in both cases then the subsidy
13 paid was related to the actual cost of the road, either
14 projected or completed; is that correct?

15 A. Yes, that's the way those programs
16 were set up.

17 Q. And I think we heard from Mr. Oldford
18 that the FMA subsidy program is different and flat
19 rates are paid that are not related to the actual costs
20 of the road?

21 A. Yes. It's my understanding they are
22 based on average provincial costs.

23 Q. What is the source of that
24 understanding, Mr. Adamson?

25 A. What is the source of that

1 understanding?

2 Q. Yes.

3 A. It is documented in an undertaking
4 that Mr. Oldford had at the hearing here that I read
5 the answer to.

6 Q. Well, it's kind of you to refer to
7 it. That wasn't my reading of the undertaking, but we
8 will file it and we can look at it.

9 MS. SWENARCHUK: (handed)

10 THE CHAIRMAN: Exhibit 782.

11 ---EXHIBIT NO. 782: Undertaking by MNR to Forests for
12 Tomorrow.

13 MS. SWENARCHUK: Mr. Chairman, just take
14 a moment to introduce it to you. You may recall my
15 asking these questions of Mr. Oldford. I was asking
16 for and assuming that there were variables taken into
17 account in negotiating road subsidies for the FMAs, and
18 I asked for what variables are taken into account and
19 the response to those questions begins at the bottom of
20 the first page of this exhibit.

21 I will just give you a moment to read it.

22 Q. So my reading of this, Mr. Adamson,
23 is that these funds are paid out to FMA holders without
24 consideration for the actual costs of the roads
25 constructed; is that not accurate, and without taking

1 into account any variables that might affect that cost?

2 MR. ADAMSON: A. Yeah. I don't want to
3 say anything that contradicts what is stated here. As
4 I mentioned, I am not directly involved in the FMA
5 program.

6 Q. Fine.

7 A. But it's my understanding that it's a
8 provincial average per kilometre and the basis of it is
9 set out here, a conservative estimate of actual road
10 construction costs.

11 Q. That was the process used in --

12 A. Initially, yes.

13 Q. Yes, about ten years ago, and as far
14 as I can see in this response there is no verification
15 at this point that the amounts being paid out are still
16 related to actual construction costs.

17 A. Well, it says that rates of payment
18 are inflated annually.

19 Q. Just to that extent?

20 A. Yes.

21 MR. TENAGLIA: A. If I might just add.
22 Certainly if the district feels that a road is not
23 going to cost the level of the road sharing agreement,
24 then the district manager would indicate that in the
25 approval of the annual work schedule and would require

1 the company or request the company to provide road
2 construction costs for those particular roads that he
3 or she feels costs less than the agreement indicates.

4 Q. On an FMA though?

5 A. Yes.

6 Q. But once the agreement is signed what
7 authority does the district manager have not to pay the
8 rates that the agreement provides?

9 A. The agreement indicates that that's a
10 maximum subsidy, maximum cost sharing agreement. It's
11 a maximum rate, not a minimum rate or not an absolute
12 rate.

13 Q. All right. Is it the practice then
14 on the FMAs not to pay the maximum rate or to pay some
15 other rate related to road costs. This is...

16 A. No, we generally pay the rate that is
17 identified but we do have, you know, the opportunities
18 to review every road that is being submitted for cost
19 sharing and I certainly recall one particular road on
20 the White River FMA where the district crown
21 representative questioned the cost of reconstruction
22 and the company provided us with the very detailed
23 breakdown for that cost construction.

24 Q. Is it a normal practice to receive
25 accounting from the company of road costs on FMAs after

1 construction to evaluate what the actual cost was?

2 A. No.

3 Q. No. So it's the exceptional case
4 then, is it?

5 A. It's -- yes, where the district
6 manager feels that the costs or the rate that we would
7 pay for the road, if he feels that that is more than
8 what the actual construction is going to cost, then he
9 would require some form of detailed analysis or cost
10 analysis.

11 Q. And just to be clear, I take from
12 what you are saying that that is something that he
13 might choose to ask for before the road is built?

14 A. At the point of approving the annual
15 work schedule.

16 Q. All right. But it's not the practice
17 to ask for that accounting after the roads are built on
18 FMAs?

19 A. No.

20 Q. To in fact verify costs?

21 A. No.

22 Q. Mr. Ward. Now, in your testimony at
23 pages 917 and 918 -- sorry, 19917 and 19918, you talked
24 about maximum flow velocities and rates -- swimming
25 rates of Ontario fish and that is referred to at pages

1 54 and 55 of the Environmental Guidelines for Access
2 Roads and Water Crossings.

3 And I would like to know what information
4 the road builders are going to have in all cases to
5 know the species of fish affected by the proposed water
6 crossing?

7 MR. WARD: A. Well, that is part of the
8 timber management planning team to provide that
9 information to the road builders and normally it would
10 be the fish and wildlife representative on that timber
11 management planning team who would be responsible for
12 that input.

13 Q. So does that mean then that the
14 Ministry is going to take on providing the species of
15 fish affected by every road water crossing?

16 A. Well, for those -- yes, they -- I
17 don't know whether for every species of fish, but for
18 those major species of fish definitely, sure, if it's a
19 fish migration route they should be aware of that.

20 Q. So are there going to be instances
21 then when road builders are doing water crossings
22 without information about what fish species may be
23 affected?

24 A. There may be examples of that, yes.
25 We are looking -- that swimming speed is related to not

1 what -- to fish migration route so they don't put a
2 structure in there that if it changes the water
3 velocity so much that it would not allow fish to be
4 able to swim right through the culvert, or even through
5 a bridge, if you had your abutments too close together
6 you could increase water velocity so they couldn't pass
7 under the bridge.

8 Q. So there will still be instances
9 where the road builders don't have that information?

10 A. It's possible, yes. We wouldn't
11 necessarily know every fish migration route.

12 Q. And there isn't any obligation on the
13 road builders to establish that information for each
14 water crossing; is that right?

15 A. That's right.

16 Q. Now, Mr. Ward, you referred in your
17 testimony to quite a number of road crossing problems,
18 quite a number of examples and they are in your photos
19 and in the testimony, and I would like to ask you
20 whether you are aware if any enforcement action was
21 taken with regard to damage to habitat related to those
22 problems.

23 The first one had to do with a washout on
24 Golden Creek which is a tributary of Red Lake in the
25 Red Lake District and that was cleaned in 1984 by high

1 pressure hoses to clean up the spawning area.

2 Do you know whether any enforcement
3 action was taken with respect to that?

4 A. No, I don't know.

5 Q. Do you know who built the road?

6 A. I know it was a contractor that built
7 the road. It's a Crown unit and the culverts weren't
8 adequately sized to handle the floods and they washed
9 out and then it was subsequently, I guess, rebuilt by
10 Natural Resources.

11 Q. Okay. Rather than taking the time to
12 go through each one of these with you, unless you are
13 aware of enforcement action taken on any of them, I
14 will just ask you for an undertaking to be provided
15 with the information as to - I will give the list of
16 incidents - who had built the roads and what, if any,
17 enforcement action was taken with regard to the
18 problems that were discovered?

19 A. When you say enforcement action, do
20 you mean whether any charges were laid under the
21 Fisheries Act, is that -- because some of the crossings
22 would be investigated by a conservation officer looking
23 at the fisheries habitat provisions and there may be
24 even biologists involved in looking at that and seeing
25 whether there was habitat damage and whether we should

1 proceed with charges or whether we should, you know,
2 get remedial action built in right away and fix up the
3 problem.

4 Q. Right. I am interested in both
5 enforcement action such as charges and any remedial
6 actions, okay?

7 A. Okay.

8 Q. So there is the one that I have
9 already identified. Then your photo No. 5 was the
10 washout of a culvert in Whitemud River in Red Lake
11 District in 1982.

12 A. Mm-hmm.

13 Q. And then photo No. 6 was a log
14 culvert in Sioux Lookout not properly engineered, in
15 your words.

16 A. Mm-hmm.

17 Q. Photo No. 7 had to do with Manion
18 Creek in Fort Frances, an erosion. Photo No. 8
19 Corrigan Township Road in Nipigon District, fill slip
20 erosion. Photo No. 9 Manion Creek ditch slope erosion.
21 That is the list now, Mr. Ward.

22 A. That is the same Manion Creek in both
23 places?

24 Q. It is. Is it the same incident?

25 A. It's the same location, yes.

1 Q. One instance then; was it, Mr. Ward?

2 A. That's right.

3 Q. Now, are you --

4 A. So that is five?

5 Q. I believe so, yes.

6 A. Five occasions.

7 Q. Now, are you aware of any studies to
8 show the frequency of damage to spawning areas from
9 sedimentation in the area of the undertaking?

10 A. Am I aware of any...?

11 Q. Any studies to show the frequency of
12 damage to spawning areas from sedimentation within the
13 area of the undertaking?

14 A. I am only aware that in certain
15 instances where there has been damage there have
16 been -- I have been involved with some investigations
17 under the Fisheries Act to see what the impact on the
18 spawning areas and you wouldn't necessarily call them
19 studies but there has been some information collected.

20 Q. So there hasn't been a study across
21 the area of the undertaking of all of these impacts; is
22 that right?

23 A. No, that's...

24 Q. One more instance to add to your
25 list. Slide No. 24, the Wapageisi River in Dryden

1 District?

2 A. Wapageisi.

3 Q. Wapageisi. Now, with respect to page
4 282 of your witness statement, Mr. Ward, and a
5 reference to Photo No. 22, you have stated there that
6 if sedimentation does occur in a spawning area, the
7 sediment can be washed away using a fire hose.

8 Now, if you do that, if you wash sediment
9 away with a fire hose, doesn't it merely wash it
10 downstream?

11 A. Yes, it would wash it down to a basin
12 downstream where it would settle out, yes. We're
13 trying to move it out of the rock rubble areas, out of
14 the interstitial spaces and moving into the sediment
15 where it settles out downstream, yes.

16 Q. So it could fill pools including the
17 deep pools where fish over winter and limit the space
18 available for fish; could it not?

19 A. I think in terms of the amount of
20 sediment that you are actually moving out of there, I
21 don't think that we would have that problem. In a lot
22 of our streams we don't have over wintering
23 populations, you know, it's very close to say mouths,
24 like a spawning area, it's not too far before you are
25 into a lake situation where you would get it out in the

1 main body of the lake.

2 But I haven't really -- when we are doing
3 this, I don't see a lot of sediment moving that would
4 maybe cause problems in terms of filling up pools. The
5 quantities haven't been that great.

6 Q. Okay.

7 A. It's a risk. You know, you move it
8 from one area and you may affect another area, but I
9 think in terms of critical habitat, it's important to
10 keep those spawning areas clean.

11 Q. So you are satisfied that those
12 remedial actions don't -- are you satisfied that those
13 remedial actions are sufficient to restore the aquatic
14 values -- the aquatic habitat without any possible
15 negative impacts downstream?

16 A. I would now believe so, yes.

17 Q. All right.

18 A. Again, you are talking -- you know,
19 it depends on the magnitude of the impact as well. I
20 mean, it's going to vary from site to site, but
21 generally from my experience it's -- I don't think we
22 are causing, you know, further problems downstream.

23 Q. Mr. Hogg, then if we could turn to
24 your paper. Beginning at page 236 you have indicated
25 in the second paragraph that:

1 "The opportunity for viewing both large
2 and small species is enhanced because of
3 improved access and the new habitat which
4 is created."

5 Now, what habitat is created by the
6 building of roads, Mr. Hogg?

7 MR. HOGG: A. That's a general statement
8 associated with the whole undertaking of timber
9 management; the idea that you create a different
10 habitat and you also create access into that habitat
11 and in the process allows people to -- this opportunity
12 to view both large and small species.

13 Q. And isn't it true that the road
14 building itself, the area of land that's covered by
15 road may be lost to habitat?

16 A. That's correct, yes.

17 Q. Until it revegetates which could be
18 very far in the future?

19 A. Which could be a number of years in
20 the future. Obviously, primary and secondary roads
21 will be in existence longer than would tertiary roads.

22 Q. Turning to page 239, the last
23 paragraph, you're talking about avoiding disturbance to
24 great blue herons during the breeding season, and you
25 say in the last paragraph:

1 "Where such disturbance is a possibility
2 construction can avoid the site of
3 concern or can take place near the site
4 during a non-sensitive period."

5 Now, the paragraph is phrased in terms of
6 possibilities. How many examples could you give us of
7 road construction moved to the non-sensitive time to
8 avoid disturbance of great blue herons during a
9 breeding season?

10 A. Well, I spoke with some people in
11 Sioux Lookout and there was an incident in '85 in the
12 Wabigoon Management Unit where road use was restricted
13 according to the provisions -- the recommendations in
14 the heronry guidelines. So that can anecdotal--
15 account for it.

16 Q. Okay. So that was one example. Are
17 there any other examples to your knowledge?

18 A. There are others and people in this
19 panel sat here and alluded to that. I don't have
20 any -- I don't have the total number of such instances
21 in the province at my fingertips right now.

22 Q. Other members of the panel alluded to
23 protection of great blue herons by changing road
24 construction schedules?

25 A. Excuse me, I didn't mean to imply

1 that. I was indicating that there's an indication that
2 wildlife concerns are taken into account.

3 Q. Okay. Well, I want to be quite
4 specific about looking for the prevalence of this
5 concern, Mr. Hogg, so my questions will be oriented
6 towards actual examples.

7 So you know one example from the Sioux --
8 from Sioux Lookout?

9 A. From Sioux Lookout, yes, and there
10 are others but I don't have them at hand. This was an
11 incident, just an example of the kind of action that
12 can be taken -- has been taken when this concern
13 arises. It wasn't meant to be an exhaustive
14 recitation.

15 Q. Well, that's my concern with your
16 paper frankly, Mr. Hogg. I find the entire paper deals
17 with possibilities, but it's extremely difficult to
18 grasp how many of those possibilities are actually in
19 effect.

20 Let's look at another problem similar to
21 that, in my view, at page 240. The last line of your
22 second paragraph, you've said:

23 "Care is taken in the handling and
24 storage of pesticides and its application
25 near waterbodies must be avoided."

1 And Reference 1 to which you refer then
2 are the new Environmental Guidelines for Access Roads
3 and Water Crossings which are only now being
4 implemented.

5 So I'd like to know what evidence you
6 have that this is in fact the practice up to this
7 point, or is it just something that is going to be
8 aspired to through the new guidelines?

9 A. My intent was the latter, to say that
10 here is the possible problem, here is the solution and
11 it happens to be per the environmental guidelines.

12 In Panel 12/13, I believe there is
13 examples given of problems in terms of pesticide
14 application. I don't know that any of those dealt
15 specifically with this kind of concern, but there was
16 an attempt in that panel to give you some real life
17 examples of that.

18 Q. Okay. So we are not to take that
19 sentence as conveying the thought that at this point
20 this care is taken and there is no difficulty; is that
21 right?

22 A. I would say yes. It's our
23 expectation that these guidelines are being used and in
24 Panel 16 you'll be hearing about compliance monitoring
25 and steps that have been and will be taken to see that

1 those guidelines are followed.

2 MR. FREIDIN: And we rely on the evidence
3 of Panel 12 and 13 of course.

4 MS. SWENARCHUK: Q. Can we look at page
5 242 where you said in the third paragraph -- second
6 complete paragraph:

7 "From the wildlife manager's perspective
8 more recreation is provided and, in the
9 long term, exploitation pressure is
10 distributed across a broader area as the
11 road system develops through a forest
12 management unit."

13 Now, are there any studies that document
14 that there is a beneficial effect from road
15 construction relative to provision of greater access or
16 is this a theory too; the more roads, clearly the more
17 access to wildlife?

18 And you're indicating that that simply
19 distributes pressure and that there isn't a negative
20 impact overall, and I'm asking if you have any studies
21 to verify that?

22 MR. HOGG: A. I guess our studies are
23 the bottom line situation, as you acknowledge, as the
24 road system goes in, people use it. I don't -- it's
25 intuitive. To be logical the next step is that people

1 are using more of the landscape for this kind of
2 recreation.

3 The question we have as managers is: Are
4 we achieving our objectives with this kind of situation
5 occurring, increasing access, and the bottom line is:
6 Yes, we do feel we are achieving our management
7 objectives with respect to moose, as an example, moose
8 harvest.

9 So the roads are going in, access is
10 increasing, the moose population is increasing, the
11 moose harvest is increasing, slowly at this point, so
12 it's on that basis that I make this kind of statement
13 here.

14 Q. Well, isn't it correct that the
15 Ministry doesn't have the population data to know this
16 overall effect really on any species other than moose?

17 A. I think we can say things about deer,
18 we have the quantitative targets.

19 Q. All right, deer as well.

20 A. And we can say it with respect to the
21 fur bearers in terms of achievement of our quantitative
22 targets.

23 Q. Well, let's just be clear there.
24 With fur bearers, as I recall, the population data you
25 have simply has to do with trapping returns; is that

1 not right?

2 A. It's indicated by trapping returns
3 primarily, yes.

4 Q. Right. And as Dr. Euler agreed with
5 me, trapping returns are not a reliable indication of
6 population health because, of course, the trapping
7 returns in any one year may be related rather than to
8 population to the market price for the pelt in that
9 year?

10 A. That is true, that there is that
11 shortcoming with that kind of information--

12 Q. Right. And you don't --

13 A. --but that information still
14 functions as an index of what is happening with the
15 population, particularly when viewed over time, over
16 many years.

17 Q. But you don't have other population
18 data on fur bearers; do you?

19 A. Other independent data, no.

20 Q. All right. And for species - now,
21 we've talked about moose and deer and fur bearers -
22 for other species, surely you don't have the data to
23 verify that proposition?

24 A. I believe the proposition is that
25 when roads are in place people are allowed access to

1 the area and in that process more recreation is
2 supplied. That is the --

3 Q. Yes, that there is more recreation I
4 have no doubt, but the rest of the sentence:

5 "Exploitation pressure is distributed
6 across a broader area as the road system
7 develops through a forest management
8 unit."

9 Do you have data for that?

10 A. And I think that follows from what we
11 just talked about, people are getting access to these
12 areas, they are using these areas for whatever their
13 purpose might be, and for those who happen to hunt,
14 they are hunting in those areas. So exploitation
15 pressure is being spread across an area as the road
16 system develops.

17 Q. At the top of page 243 you've said:

18 "In the case of trapping, harvest
19 pressure can be controlled by the
20 assignment of appropriate quotas."

21 And that refers particularly to marten
22 which are particularly susceptible to increased
23 trapping pressure that new access can allow.

24 Now, can you tell us where in the
25 province the quotas for marten have been adjusted to

1 account for harvest pressure related to increased
2 access? Is this just another possibility?

3 A. It certainly is another possibility
4 and certainly both -- there are, as a matter of
5 routine, in much of the north quotas put on lynx,
6 fisher, beaver and marten and those adjusted according
7 to what the local situation might be and that's a
8 district judgment that's made.

9 Q. Okay. But, again, whether or not
10 those quotas are effective in protecting the population
11 of the fur bearer is a question that your population
12 data cannot answer; can it?

13 You only have fur bearer trapping
14 returns, so the effectiveness of that technique really
15 can't be verified by current Ministry data; isn't that
16 correct?

17 A. Well, I guess I would contend that
18 the effectiveness has been proven historically in that
19 fur trapping has occurred for a long time in the
20 Province of Ontario.

21 Q. But surely --

22 A. The quota system was instituted --

23 MR. FREIDIN: Let him answer the
24 question, please.

25 MR. HOGG: The quota system was

1 instituted because of perceived problems of harvest and
2 it's apparently successful in that trapping continues
3 as a viable activity in the Province of Ontario today.

4 I should - actually I want to get into
5 this a little bit - there are indicators other than
6 just numbers that are relied upon in determining what
7 the health of a fur bearer population might be.

8 An example of that is the ratio of, for
9 instance, juvenile marten to adult female marten, and
10 the rule of thumb that's evolved through time is that
11 if you're taking -- if there's greater than three
12 juvenile marten per adult female the population is in
13 good shape, so -- and that judgment is made in the
14 absence of having an absolute population number.

15 So those kind of indicators are available
16 to our fur managers to make some assessment about the
17 appropriate level of harvest of those -- of marten, as
18 an example.

19 MS. SWENARCHUK: Q. But isn't it true
20 that for most of the years, if we're thinking of
21 hundreds of years of history, for most of the years
22 that trapping was a viable activity in Ontario,
23 trapping was being carried out largely in roadless
24 areas?

25 MR. HOGG: A. That would be true in the

1 historical past, sure.

2 Q. Now, on page 243, Mr. Hogg, the top
3 of the second paragraph, you've said:

4 "Generally the Ministry considers the
5 benefits of improved access as provided
6 by logging roads to outweigh the
7 disbenefits."

8 Now, can you tell me what studies and
9 analyses the Ministry has carried out to conclude that
10 benefits outweigh disbenefits?

11 A. Again, the specific quantitative
12 information that you seem to be looking for is not
13 there. That idea of benefit has to do with things like
14 recreation, has to do with things like game management.

15 That's the sort of concept I had in mind
16 when these words were put together, not a specific
17 study to say: This population in this area benefitted
18 in this way because roads are put into that location.

19 Q. Okay. What about non-game species
20 then?

21 A. In terms of benefits to non-game?

22 Q. (nodding affirmatively)

23 A. Well, there are many -- it's hard to
24 separate the effects of access from harvest, as we have
25 already talked about.

1 Q. Exactly.

2 A. And that leads to certain kinds of
3 habitat that as the forest regenerates those younger
4 forest stages are habitat to a whole host of species.
5 And Dr. Euler, in his evidence in Panel 10, provided
6 that kind of information, what kind of species you find
7 and what kind of habitat. Many of those are non-game
8 species.

9 Q. Okay. Have you done any studies of
10 the impacts of road construction itself on non-game
11 species?

12 A. When you say the effects of road
13 construction, I'm not exactly sure what -- I'm kind of
14 missing the point, I guess.

15 Q. Well, are you aware of any species
16 whose -- who are in - I shouldn't use the word
17 endangered - whose population viability is affected by
18 the construction of roads, No. 1; and, secondly, by
19 road access into previously unroaded areas?

20 A. Affected adversely?

21 Q. Yes.

22 A. At the population level, no. I
23 think -- well, there are examples around where we have
24 taken action to avoid an area of concern with a
25 particular non-game species attached to it, the heron,

1 the osprey, the bald eagle, those sorts of things. So
2 to that extent there has been those kind of measures
3 taken to avoid the adverse impact you're concerned
4 about.

5 Q. And then if you come back after the
6 measures were taken and studied whether the measures
7 were effective in protecting the species?

8 A. I'm not aware of in the strict
9 scientific sense you might intend it, but there
10 certainly is information around that people go back in
11 the areas being used by the thing that they're
12 concerned about, the bald eagle is there, the osprey is
13 there, the heronry is still being used.

14 Q. Have you been involved in that
15 personally?

16 A. I have not personally been involved
17 in that.

18 Q. So you've heard some anecdotes of
19 that, is that what that information is based on?

20 A. It's involved -- yes, I state that on
21 having talked to staff across the province, yes.

22 Q. What do you mean by across the
23 province? You talked to people in every district,
24 every region, what?

25 A. I certainly talked to people in every

1 region. In many districts, I can't say it's every
2 district in the area of the undertaking.

3 Q. Okay. So MNR -- the Ministry though
4 has not in a kind of systematic way evaluated the
5 effectiveness of the measures that you've talked about
6 here?

7 A. No, we are evaluating effectiveness
8 of our management in total, and Dr. Euler again spoke
9 to that in terms of sort of the status of populations
10 that are known today and indicated there was a
11 monitoring program that was being proposed, and which
12 you will hear more about in Panel 16, and it's at that
13 level which we'll be really assessing how our
14 management is working, both what we do in terms of
15 roads, they do in terms of harvest or renewal.

16 Q. Do you have any experience in the
17 field in doing timber management planning, Mr. Hogg?

18 A. Have I personally participated in
19 timber management planning exercises?

20 Q. (nodding affirmatively)

21 A. Not personally in the sense of being
22 on the team. I have sat in on occasional meetings, I
23 have trained in training sessions, that sort of thing.

24 Q. You've referred I believe on page 244
25 to the resource manuals, specifically the resource

1 manual for caribou habitat. You've referred to that in
2 about the fourth line from the bottom of the page.

3 A. Yes.

4 Q. Now, again, those resource manuals
5 we've heard before are not mandatory. What information
6 do you have that would allow you to ensure the Board
7 that in fact they're being applied in every area where
8 they should be? Isn't this just another possibility?

9 A. This is presented as a way to address
10 that problem.

11 Q. Right.

12 A. In terms of actual -- what's
13 occurring out there, that's something we monitor
14 through our audit and monitoring process.

15 Q. At page 245, the third paragraph, you
16 are talking now about road abandonment and you indicate
17 that:

18 "Naturally abandoned rights-of-way will
19 revegetate eventually, thereby
20 contributing to wildlife habitat.
21 Physical abandonment may include
22 scarification of the compacted roadway
23 and planting of trees."

24 That's under the new guidelines; right?

25 A. That's correct.

1 Q. All right.

2 A. Yes.

3 Q. "Alternatively, landing and roads can
4 be seeded with legumes such as clover
5 to benefit feeding, particularly by
6 white-tailed deer and ruffed grouse."

7 Now, Mr. Hogg, isn't it true that
8 abandoning the road simply means that the Ministry will
9 no longer maintain it, that it could remain usable
10 depending on the road for even up to 15 or 20 years
11 before it washes away or revegetates to a state that
12 vehicles can't get through?

13 A. It might take some extended period of
14 time before vegetation grows in certain parts of it,
15 yes.

16 Q. Right. And during that time
17 disturbance and harvest pressures; that is, wildlife
18 harvest pressures, can be just as intense as when the
19 road was was in active service?

20 A. I would have -- saying just as
21 intense.

22 Q. It could continue, in any event?

23 A. It can continue and with time -- and
24 many of these areas that are accessed by tertiary roads
25 will decrease as they simply become less and less

1 passable, the roads themselves are less and less
2 useful.

3 Q. But it doesn't simply cease to be
4 used because, in a particular year, the Ministry stops
5 maintaining it?

6 A. At that exact instant in time there
7 will be some use of the road made for a number of years
8 in the future, that's correct.

9 Q. And in fact it could be quite a long
10 time before the road revegetates and produces habitat
11 for animals?

12 A. In the areas that I've observed I
13 think that site recovery begins pretty quickly and even
14 in as few as two to three years you start to see a
15 closing in from the edges, and the roads that I have
16 observed I would say 10 years they're mostly
17 revegetated to some extent, to a very great extent in
18 terms of the margins and the middle parts of the road.

19 Q. Ten years. Okay. Now, in your oral
20 testimony, Mr. Hogg, at page 19979 you were talking
21 about the environmental guidelines, the new
22 environmental guidelines and you said, beginning at
23 line 15:

24 "In terms of an item like wetland
25 protection, if we look back at page 13

1 in the bullet point second from the
2 bottom on the left-hand column, talks
3 about avoiding unfavourable construction
4 areas as much as possible and, as Mr.
5 Adamson has mentioned, that includes
6 wetlands. They are not desirable places
7 to build roads and there's implications
8 for wildlife habitat there."

9 So do you have any evidence that this is
10 a current practice in the area of the undertaking to
11 avoid road construction in wetlands for habitat
12 protection?

13 A. I will let Mr. Adamson speak to the
14 extent that it might occur.

15 I don't have examples for you where it
16 was done for habitat protection purposes per se, but
17 Mr. Adamson's comment - and he can explain for
18 himself - I think was made in the context of that they
19 are not very good places to build roads. And so the
20 attempt is there not to build roads on wetlands,
21 whatever the values might be there, whatever the
22 wildlife values or the fisheries values might be there.

23 Q. Mr. Adamson, do you want to add to
24 that? In your experience, is there any attempt to
25 avoid wetlands generally or specifically for habitat

1 protection; what is the current practice?

2 MR. ADAMSON: A. The practice is to
3 avoid them generally certainly and, in some instances,
4 for example if the wetland has standing water that's
5 water fowl habitat, I think it would only be crossed as
6 a last resort, if there was any way around it, and when
7 it is crossed certain erosion protection measures will
8 be taken to minimize the disturbances caused.

9 Q. And that's current practice; is it?

10 A. I believe so, in my experience.

11 Q. Now, Mr. Adamson, at page 19989 of
12 your testimony starting at line 8, you indicated:

13 "I have not experienced being involved in
14 relocating a road due to wildlife
15 concerns."

16 Now, that's in how many years as an
17 industry -- as a Ministry engineer?

18 A. That's almost 15 years.

19 Q. So is it fair for me to conclude that
20 wildlife concerns are not frequently raised with regard
21 to road locations?

22 A. Not necessarily, because my role in
23 the road planning and road construction is a relatively
24 narrow role, and quite often at the point at which I
25 get involved there is already a line on a map that's

1 been selected taking into account other considerations.

2 Q. So you're not aware of the prevalence
3 of relocating roads for wildlife concerns then?

4 A. Not in my personal experience.

5 MR. HOGG: A. I think the point that I
6 wish to make here, Ms. Swenarchuk, is that we use the
7 area of concern planning process and when those areas
8 are identified then it's routine that the road corridor
9 does not pass through it and that might explain why Mr.
10 Adamson hasn't encountered many instances in 15 years,
11 or he has not encountered many over time.

12 MR. PYZER: A. Yes, I'd agree with that.
13 I, at the district level, had on almost a daily basis
14 reasons for relocating roads for that reason. When Mr.
15 Adamson gets involved it would be after we've made that
16 decision to relocate the road and then he would get
17 involved from an engineering perspective.

18 We relocate roads for bald eagles,
19 ospreys, moose wintering yards; many, many wildlife
20 reasons.

21 Q. Well, is it your reading of the Moose
22 Habitat Guidelines, Mr. Hogg, that they actually
23 prevent the construction of roads in areas of moose
24 habitat or that they advise against?

25 MR. HOGG: A. I think the process is

1 that we identify areas of concern and then -- that may
2 well be moose habitat, and if we're looking at the
3 moose guidelines on page (ii), specific area of concern
4 guidelines, Item 1(a) it talks of those features that
5 we would routinely avoid.

6 That means that there may be
7 circumstances that indicate you have to pass within or
8 near one of those areas, then you would, from a
9 wildlife management point of view, choose and in the
10 other considerations like practicality of topography,
11 or I could perhaps envision a scenario where you have
12 to get from from A to B in order to get the timber from
13 B, and the biologist may have to make the judgment or
14 senior district management make the judgment that
15 perhaps some form of trespass within the normal
16 120-metre reserve on an aquatic feeding area may be
17 necessary to get from A to B. So these aren't a strict
18 prohibition.

19 Q. Right. And if we look at the wording
20 on that page as well as further in the document, and I
21 will give you the reference, specific area of concern
22 guidelines, paragraph 1(a):

23 "Access roads should be routed to avoid
24 aquatic feeding areas, mineral licks and
25 calving areas."

1 It's 'should' rather than 'shall'.

2 A. Yes.

3 Q. Right. And similarly on page 6,
4 paragraph 5.1.1 on forest access:

5 "Access roads should avoid mineral licks,
6 aquatic feeding areas and calving sites
7 to protect these important habitat
8 features..." et cetera.

9 But it's not that they shall avoid these
10 areas?

11 A. That's correct.

12 Q. Now, Mr. Hogg, as I discussed with
13 Mr. Adamson earlier, there is a reference in the
14 witness statement to roadside herbicide use at page
15 208.

16 Would you agree with me that herbicide
17 use along roads and as well as heavy traffic use may
18 contaminate nearby soils and food chains with
19 herbicides, petroleum products and lead?

20 A. I guess I'm not familiar enough with
21 the herbicides to make that sort of judgment. There is
22 an impact of removing vegetation that I could speak to
23 as opposed to the contaminant side of things.

24 I believe those topics are being dealt
25 with by Mr. Kingsbury and Mr. Ritter in their testimony

1 in terms of application of herbicides, just the exact
2 nature of the make up those chemicals and the kind of
3 environmental effects they might have.

4 Q. I see. All right.

5 MS. SWENARCHUK: Mr. Chairman, how long
6 would you intend to sit today?

7 THE CHAIRMAN: Well, that sort of depends
8 on what we have scheduled for the rest of the day and
9 tomorrow.

10 How far are you in your examination?

11 MS. SWENARCHUK: I will finish in another
12 one to two hours, but it is a whole new area and I'd
13 either prefer to finish it today or do it in the
14 morning.

15 THE CHAIRMAN: Well, we have only, is it
16 Ms. Kleer tomorrow, and how long were you going to take
17 with Panel 14?

18 MS. KLEER: I anticipate one hour, or
19 less than two hours.

20 THE CHAIRMAN: And that is all I believe
21 with respect to the cross-examinations on Panel 14.

22 MS. SWENARCHUK: Ms. Seaborn.

23 MS. BLASTORAH: Isn't MOE going tomorrow?

24 THE CHAIRMAN: I understand that they are
25 not going to be cross-examining.

1 MS. SEABORN: No, Mr. Chairman --

2 THE CHAIRMAN: Oh, sorry, that was with
3 Mr. Ritter's panel.

4 MS. SEABORN: That was with respect to
5 Dr. Ritter and Mr. Kingsbury. Subject to what comes up
6 in future, I may have a few short questions with that
7 group.

8 With respect to this panel though, I can
9 advise that given some of the areas that Ms. Swenarchuk
10 has gone through with the witnesses today, I certainly
11 won't be half a day. I would say about an hour and a
12 half to two hours is more realistic.

13 THE CHAIRMAN: Well then, it looks like
14 there will be a total of maybe five hours at the
15 outside.

16 MS. SWENARCHUK: Mm-hmm.

17 THE CHAIRMAN: And that is giving
18 everyone I think the benefit of the doubt. We can't
19 start with Dr. Ritter and Mr. Kingsbury until Thursday
20 morning and it is our understanding as well for
21 Thursday that there is going to be one more hour from
22 OFAH, I believe, and then you are going to be, Ms.
23 Kleer, about five hours?

24 MS. KLEER: I would anticipate about
25 that.

1 THE CHAIRMAN: So that brings us to six
2 and then Ministry of the Environment may not be
3 cross-examining at all, and that will only leave
4 re-examination.

5 And how long do you anticipate Ms.
6 Blastorah to be in re-examination?

7 MS. BLASTORAH: This is for Panel 12 and
8 13?

9 THE CHAIRMAN: Oh, sorry, that is Ms.
10 Murphy who is going to be conducting...

11 MS. BLASTORAH: I understand from
12 speaking to her that she is currently projecting half a
13 day but it's still a ballpark estimate because there
14 are other parties still to finish their
15 cross-examination.

16 But I spoke to Mr. Mander at the end of
17 last week about the Friday. We are supposed to be
18 sitting this Friday and, unfortunately, not all the
19 Panel 14 witnesses are available given...

20 THE CHAIRMAN: Well, we have another
21 concern on the Friday as well and; that is, we were
22 going to, depending on what was going to be the
23 estimates of counsel, suggest that Friday we start
24 early in order that we could leave here by 11:45 on
25 that flight. The reason for that is, is that there is

1 a meeting that is scheduled for late in the day with
2 one of the Board members and the Attorney General that
3 has to fit in with his timetable to some extent.

4 MS. SWENARCHUK: He can come to Thunder
5 Bay, Mr. Chairman.

6 THE CHAIRMAN: Well, I don't think that's
7 possible. But in any event, what we are trying to say
8 is we would try and adjust the hours so that we could
9 accommodate everybody and we could possibly sit later
10 Thursday evening.

11 We would perhaps ask that Ms. Murphy be
12 prepared to start her re-examination Thursday. She
13 can't do that?

14 MS. BLASTORAH: Well, I did speak briefly
15 to Ms. Murphy about this after having spoken to Mr.
16 Mander about the Friday and when I indicated to him
17 that Panel 14 is not able to be here, all the witnesses
18 together, I also indicated that it has been the
19 practice that the Board will allow the counsel who is
20 re-examining some time to prepare re-examination based
21 on the cross-examination that has been completed.

22 And given the projections for Thursday,
23 it sounds like it's going to be a fairly full day with
24 an hour from OFAH and I believe it was five to six
25 hours -- five hours for Ms. Kleer.

1 THE CHAIRMAN: But why can't, with
2 respect Ms. Blastorah, Ms. Murphy commence with the
3 re-examination based on the fact that several of the
4 parties cross-examined even prior to this week?

5 MS. BLASTORAH: I will have to let Ms.
6 Murphy address that.

7 THE CHAIRMAN: And obviously the
8 cross-examination with respect to Ms. Swenarchuk and
9 some of the parties that are cross-examining this week
10 could occur on the Friday.

11 MS. BLASTORAH: That's Panel 14.

12 THE CHAIRMAN: Oh sorry, yes.

13 MS. BLASTORAH: Perhaps I could let Mr.
14 Freidin speak to that since he's more directly involved
15 in Panels 12 and 13.

16 MR. FREIDIN: I am not going to speak
17 directly about my involvement in 12 and 13, Mr.
18 Chairman, but I can advise that the time that I have
19 been granted by the Board in evenings to prepare my
20 re-examination guaranteed that in every case I probably
21 kept down the number of questions by about 75 per cent.
22 It's that sort of time that can't realistically be
23 spent -- or that kind of thing can't occur until all
24 the cross-examination is over.

25 And I think to ask Ms. Murphy to be ready

1 to go, start her re-examination from, you know,
2 cross-examination; one, before she has really had a
3 chance to look at six hours' of cross-examination on
4 Thursday and figure out how that may affect things, is
5 not a very productive way for her to be spending her
6 time.

7 THE CHAIRMAN: Well, can you anticipate
8 any way that we could finish early on Friday and yet
9 still complete the re-examination short of starting at
10 5:00 a.m.?

11 MR. FREIDIN: The only suggestion I can
12 make is that we wait until Thursday and see how things
13 go and perhaps deal with it when Ms. Murphy is here.

14 I mean, I will tell her what your
15 concerns are and we will do the best we can to
16 accommodate the Board's wishes.

17 THE CHAIRMAN: I mean, the difficulty we
18 are having in this particular case is that we appear to
19 have enough hours available to accommodate everyone, we
20 would just like to fit it in with the amount of time we
21 have available so that we could depart by 11:45 on
22 Friday, and we are willing to sit, for instance, a bit
23 later tonight, we are willing to sit a bit later --

24 MR. FREIDIN: Sitting late tonight.

25 THE CHAIRMAN: No, I realize that, it's

1 not going to help because of Dr. Ritter and Mr.
2 Kingsbury not arriving until Thursday, but nevertheless
3 we should be able to finish with them -- are they
4 arriving Wednesday night or Thursday morning?

5 MR. FREIDIN: Late Wednesday night for
6 one. Mr. Kingsbury I don't know when he's arriving,
7 whether he is arriving in the morning or whether he's
8 arriving in the evening.

9 THE CHAIRMAN: Well, presumably we could
10 get an early start on Thursday; could we not?

11 MR. FREIDIN: Assuming Mr. Kingsbury is
12 arriving on Wednesday night. I am pretty sure he's
13 arriving on Wednesday night.

14 THE CHAIRMAN: See, if we started
15 early --

16 MR. FREIDIN: What do you mean by early?

17 THE CHAIRMAN: Well, as early as it takes
18 to try and complete this, eight o'clock for instance on
19 Thursday.

20 MR. FREIDIN: Well, we are still going to
21 run into the concern that I have raised about
22 proceeding with the re-examination before --

23 THE CHAIRMAN: Well, perhaps though if we
24 start very early on Thursday and finish with Dr. Ritter
25 and Mr. Kingsbury we could adjourn for a short time--

1 MR. FREIDIN: That may be possible.

2 THE CHAIRMAN: --to allow Ms. Murphy to
3 consider the rest of the cross-examinations.

4 MR. FREIDIN: That's possible.

5 THE CHAIRMAN: And then maybe do some of
6 it Thursday night.

7 MR. FREIDIN: That is certainly possible.

8 THE CHAIRMAN: And then start early on
9 Thursday morning.

10 MR. FREIDIN: Friday morning?

11 THE CHAIRMAN: Sorry, Friday morning.

12 MR. FREIDIN: I will try to get --

13 THE CHAIRMAN: You see, if we start early
14 tomorrow -- sorry, Thursday, we may be finished with
15 the cross-examinations by two or three in the afternoon
16 and then we could adjourn for two or three hours and
17 then come back and at least cover part of the
18 re-examinations late Thursday.

19 MR. FREIDIN: Well, I think -- you know,
20 really, I mean I hear you, Ms. Murphy will hear you,
21 and we will keep that in mind.

22 I mean, really Ms. Murphy is going to
23 have to get up at the end of the cross-examination and
24 indicate to you whether in fact two hours, three hours
25 is going to be sufficient for her to deal with the

1 re-examination and she will have to justify whatever
2 position she wants to put forward.

3 THE CHAIRMAN: Okay. Well, we understand
4 that, Mr. Freidin, but surely Ms. Murphy has given some
5 consideration of the re-examination up to this point.

6 MR. FREIDIN: She has.

7 THE CHAIRMAN: I mean, I assume she is
8 not waiting until the last word is said on
9 cross-examination before she starts her--

10 MR. FREIDIN: That's correct.

11 THE CHAIRMAN: --preparation. So it
12 seems to us that with luck we should be able to cover
13 some of it on Thursday and then finish off Friday
14 morning starting early. Anyway, that will be the
15 objective, if at all possible and I guess -- when will
16 Ms. Murphy be here? When will she be here in front of
17 us so that we can address these matters directly to her
18 or hear her concerns?

19 MR. FREIDIN: Well, she's here now. I
20 will speak to her tonight and advise the Board as to
21 whether she shares my concerns or whether she feels
22 based on what she has done that there is no problem.

23 THE CHAIRMAN: All right. Well, I take
24 it then, Ms. Swenarchuk, there is not much point in
25 continuing on today since we will have adequate time to

1 finish tomorrow without sitting particularly lengthy
2 hours.

3 MS. SWENARCHUK: That would allow me to
4 give Mr. Hogg one more article to read overnight, Mr.
5 Chairman. It's a short article.

6 THE CHAIRMAN: And then, Mr. Hogg, we
7 could push on today so maybe you wouldn't have to read
8 the article. But, in any event, that sounds
9 reasonable.

10 MS. SEABORN: And, Mr. Chairman, in the
11 event that the estimates are not accurate, I would ask
12 that the Board consider sitting late tomorrow so that I
13 may complete my cross-examination of this panel,
14 otherwise I then will be interrupted with Mr. Hanna's
15 cross-examination.

16 THE CHAIRMAN: Well, we will certainly do
17 that.

18 MS. SEABORN: Thank you.

19 THE CHAIRMAN: But I take it, Ms.
20 Swenarchuk, you have a fairly accurate appraisal of how
21 far you have to go?

22 MS. SWENARCHUK: Yes.

23 THE CHAIRMAN: And Ms. Kleer, you are
24 relatively assured that you can finish within five to
25 six hours?

1 MS. KLEER: I am relatively certain.

2 THE CHAIRMAN: I am sorry, tomorrow

3 it's --

4 MS. KLEER: On Thursday.

5 THE CHAIRMAN: Two hours?

6 MS. KLEER: Two hours at the outside.

7 THE CHAIRMAN: At the outside.

8 MS. KLEER: (nodding affirmatively)

9 THE CHAIRMAN: Well, that will certainly
10 get us finished tomorrow in plenty of time. In fact,
11 there doesn't appear to be much sense in starting early
12 tomorrow either.

13 MS. SWENARCHUK: What time would you
14 like, Mr. Chairman?

15 THE CHAIRMAN: Okay. I think tomorrow we
16 might as well start at nine o'clock, bearing in mind
17 that the following two days we will probably be
18 starting earlier than that, and we should be able to
19 finish off tomorrow as well by dinner time without any
20 problem.

21 MS. SWENARCHUK: Thank you, Mr. Chairman.

22 THE CHAIRMAN: Very well. Nine o'clock
23 tomorrow morning.

24 ---Whereupon the hearing adjourned at 4:30 p.m., to be
25 reconvened on Wednesday, September 6th, 1989,
commencing at 9:00 a.m.

E R R A T A

VOLUMES 120-126

Re: Peter Kingsbury's evidence

For "absorption", please read: "adsorption".

